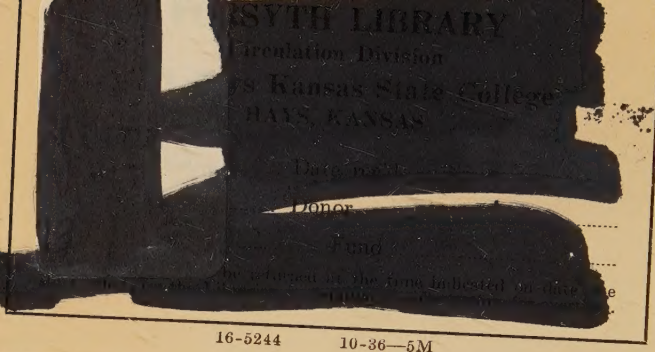
UNIVERSITY DEBATERS' ANNUAL

1928-1929



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UNIVERSITY DEBATERS' ANNUAL

Constructive and Rebuttal Speeches Delivered in Debates of American Colleges and Universities during the College Year, 1928-1929

Edited by
EDITH M. PHELPS

NEW YORK
THE H. W. WILSON COMPANY
1929

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v. 15, 1928-1929

Published September 1929
Printed in the United States of America

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PREFACE

Nine intercollegiate debates of the debating season for 1928-1929 have been reported for this Annual. Each debate is on a different subject, the object being to make the book representative of the year's debating, and at the same time, to cover subjects for which material is likely to be wanted for some time to come.

The reports have been edited only for typographical and other obvious errors, in order to reproduce as closely as possible the speeches of the various debaters as they were actually delivered. Briefs and bibliography accompany each debate.

Except as otherwise mentioned, the bibliographies have been prepared by Mrs. Ruth Tichenor, and the briefs by the compiler. Grateful acknowledgment is made to those who so generously assisted in securing the necessary stenographic reports and other material for publication.

September 12, 1929

Edith M. Phelps

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CHAPTER I

THE PACT OF PARIS

UNIVERSITY OF WISCONSIN
versus
UNIVERSITY OF IOWA

RESOLVED: *That the United States Senate should ratify the Pact of Paris without reservations.*

This debate between an Affirmative team representing the University of Wisconsin and a Negative team for the University of Iowa, was held on the night of December 13, 1928, in Music Hall, Madison, Wisconsin. The Presiding Officer was Dr. George E. Hunt of the Christ Presbyterian Church of Madison, and the Judge of the debate was Professor Alan H. Monroe of Purdue University, who gave his verdict in favor of the Negative team. This stenographic report of the debate was arranged for by Professor H. L. Ewbank of the Department of Speech, University of Wisconsin.

BRIEF

THE PACT OF PARIS

AFFIRMATIVE

INTRODUCTION:

A. The Senate of the United States is now in session.*
   1. It will soon ratify or reject the Paris Peace Pact.

B. It is the feeling of the Affirmative that the Pact ought to be ratified immediately and unanimously.

C. Four months ago,* representatives of fifteen nations met in Paris and signed the Peace Pact.
   1. It is a very simple document, composed of a preamble and two short articles.
      a. In Article I, the high contracting parties condemn recourse to war for the solution of international controversy, and renounce it as an instrument of national policy in their relations with one another.
      b. In Article II, they agree that the settlement of all disputes or conflicts, of whatever nature or origin, shall never be sought "except by pacific means."

D. The men of the Affirmative team desire to ask the Negative these questions.
   1. Are they in favor of ratifying the Peace Pact with reservations? Or,
   2. Are they opposed to it on any terms?

The Affirmative believe that the Senate of the United States should ratify the Pact of Paris, because

I. It is the logical culmination of our foreign policy.
   A. In 1794 when we were engaged in controversy with England, war seemed inevitable.
      1. The Jay Treaty was the result.

* This debate took place December 13, 1928.

a. For the first time, pacific arbitration was written in our history.

B. Twenty years later, the United States and Canada entered on a period of competitive armaments.
   1. Again the principle of peaceful relations was involved.
      a. The result has been one hundred and fourteen years of peace with Canada.
      b. It amounted to renunciation of war with Canada.

C. In 1899, the United States expressed its good will and sent its delegates to the First Disarmament Conference.
   1. The result was that our delegates changed the entire character of the Conference and were instrumental in the formation of the Hague Tribunal.

D. Various treaties made by us indicated a growing interest in the peaceful settlement of international disputes.
   1. The Root Treaties of 1907.
   2. The Taft Treaties of 1910.
   3. The Bryan Treaties, negotiated with twenty-six nations.

E. The Paris Peace Pact has grown out of this foreign policy.
   1. The initiative was taken by Mr. Levinson of this country, on reading M. Briand's statement that France would be willing to subscribe with the United States to any mutual agreement tending to outlaw war.
      a. He went to France, interviewed French statesmen and asked them to put M. Briand's remarks into official form.
         (1) The result was the Bilateral Treaty.
   2. Mr. Kellogg succeeded in converting this into a Multilateral Treaty in which all of the nations involved agreed to renounce war.
   3. From that point, the United States continued to take the initiative.

a. Questions regarding the Treaty were answered and all information supplied from the office of our Secretary of State.
b. The final result was the Pact of Paris.
(1) It was signed in the end exactly as Mr. Kellogg proposed it.

II. The Pact of Paris, if ratified by the American Senate, will lead to the pacific adjustment of all international problems.

A. It is the preamble to a new body of international law, which is necessary today.
1. At the present time, war is the supreme court of the nations, and international law is its code.
a. As Clayton Morrison says, in his "Outlawry of War,"
(1) Three-fourths of the body of international law consists of rules of war.
(2) The remaining one-fourth has to do intimately with the consequences of war.
2. Tomorrow, under the Peace Pact, peace would be the supreme court of the nations, and a new international law would be its code.

B. Article II of the Pact promises essentially that all difficulties shall be settled by pacific means.
1. This implies that nations solemnly declare their belief that a new international law will be developed.

C. There is universal agreement of expert opinion to the effect that the Pact is primarily only a preamble to a new international law.
1. Wilbur Forrest stated in the New York *Herald Tribune* that
a. The practical side of the Kellogg Peace Pact is yet to be developed and extended at the Conference tables.
2. Secretary Kellogg has frequently reiterated a similar sentiment.
3. John Dewey said, in the *New Republic*:
a. No one can or does believe that the Kellogg

Peace Pact is anything but a preliminary to a new code of international law.

4. The prediction of Elihu Root and others, in 1919, that the League of Nations would begin and develop new international law, has at last been partly realized.

D. The Pact of Paris has the necessary support to make it effective.

1. Sixty nations are definitely in favor of it.

a. The signing of the Pact by the plenipotentiaries of these nations is practically the same as ratifying it.

(1) Owing to the nature of their parliamentary forms of government, ratification is a mere formality.

2. American ratification is practically certain.

a. The party leaders of the United States are unanimously in favor of the Pact.

b. In the Senate debate, there is no formidable opposition, with or without reservations.

c. There is nation-wide enthusiasm for it.

III. The Pact embodies the world's hopes for peace.

A. It seeks to outlaw war.

B. It will strengthen the peace party in every nation.

C. It represents the ultimate ideal toward which we must move.

1. Outlawry of war will do away with war just as the outlawry of duelling eventually put it out of existence.

a. It is a fallacy to think that war cannot be outlawed until the causes of war are removed.

(1) We did not wait to outlaw theft, murder, slavery and piracy until their causes were removed.

2. It will stimulate and give momentum to the peace movement in all nations.

a. It has in it the teeth of public opinion.

NEGATIVE

INTRODUCTION:

A. The answer to the question asked by the Affirmative as to the stand of the Negative on the Pact of Paris, is that

1. The Negative has no use for the Pact whatever, with or without reservations.

2. If, however, from some ulterior motives, it is desirable for the United States to affix her signature to this Pact, it certainly should not be signed without reservations.

The Negative would advocate that the United States refuse to sign this Pact.

I. While it is idealistic, it is a broad statement and, as such, will be open to interpretation on the part of the signatories.

A. It will eventually be the statement as it is interpreted and applied by the nations signing it.

B. One meaning that has already been read into the Pact is that the right of defensive warfare shall never be questioned.

1. This might be granted were it not for some of the causes over which nations insist they have the right to go to war.

a. The right to protect against invasion is not to be doubted, but

b. The nations have also claimed the right to go to war against encroachments upon their spheres of special interest.

(1) Great Britain's contention that she has certain spheres of special interest which she will allow nothing to interfere with is a case in point.

(2) The right of the United States to insist on observance of the Monroe Doctrine is another illustration.

(3) The French Alliances provide other very potent possibilities for war.

2. Since this is true, the Kellogg Peace Pact does not add anything to the cause of world peace.

II. The Kellogg Peace Pact involves us undesirably in the affairs of Europe.

A. Affairs in Europe are in a bad state.

1. We do not want to get mixed up in them.

B. We would get mixed up in them by ratifying the Kellogg Peace Pact.

1. Under the interpretations placed on the Pact by other nations, the United States gives the obligations of the League of Nations a legal sanction.

a. The European nations agreed to ratify the Pact on condition that it did not abridge their right to carry on the obligations of the League.

2. This may involve us in embarrassing situations.

a. At times the obligations of the League might affect us directly, and place us in a dilemma.

C. The United States would become morally, as well as legally, involved in the affairs of Europe.

1. We would join hands with Europe in declaring that

a. Aggressive war is an evil.

b. Certain methods of treating that evil are justified.

c. We will not affect the right of European states to carry on the work of the League of Nations.

2. We could not withdraw from these obligations.

D. We would be involved in the affairs of Europe because of the state of European public opinion.

1. European statesmen are in favor of the Pact because the United States is behind it.

a. It makes the force of the United States available to settle world problems.

2. European public opinion believes that the United States will

a. Join in any League action to employ military and naval force against any nation announced by the League to be an aggressor.
b. Respect the naval blockade and financial and economic boycott which the same body may pronounce against any power.

3. The United States should not become involved in the affairs of Europe.
   a. The Treaty of Versailles, based on the old principle of a balance of power, left many points which are bound to lead to further disagreements.
      (1) Lloyd George said that Europe is a seething cauldron of international hates and prejudices.
   b. The people of the United States are not in favor of any such move.

III. The Pact of Paris will not necessarily be a success because it is idealistic.
   A. Other pacts, very similar in ideals, have been failures.
      1. The Holy Alliance was a failure.

IV. The Kellogg Peace Pact is not the two articles which have been described.
   A. Reservations have been put into it, giving European governments the right to wage wars of self-defense.
      1. This applies to cases of aggression not only in territory but also in "spheres of special interest."
         a. Henry Cabot Lodge says that these exceptions and reservations reduce the Kellogg Pact to an absurdity.
         b. As long as these reservations are included many American authorities are opposed to the Treaty.
      2. Also, each individual country can apparently decide for itself just what constitutes a war of self defense.
         a. Professor Borchard of Yale says that the Pact is, in fact, a solemn sanction for all wars

mentioned in the qualifications and exceptions.

3. Actually, war is not outlawed at all.
   a. The Kellogg Pact actually re-emphasizes the legality of war.
   b. It makes it easier for nations to justify their going to war.

B. These reservations have been practically incorporated in the Pact.
   1. It is the custom in European legislatures to accept what the cabinets propose.
      a. Ratification is a mere formality.
   2. We have a different situation in the United States.

THE PACT OF PARIS

UNIVERSITY OF WISCONSIN
versus
UNIVERSITY OF IOWA

CHAIRMAN

DR. GEORGE E. HUNT

I am told that this is the first year in which so large a number of groups are interested and organized for this debate. Think of us as part of eight other groups, or nine groups tonight, meeting to discuss this very question. The Negative team from Wisconsin is up at Minnesota taking the negative side of this question. It is an extremely appropriate theme for all of our interests at this time—RESOLVED: That the United States Senate should ratify the Pact of Paris without reservation.

Some of these debaters have won prizes and honors in the field of oratory. The first Affirmative, Mr. Joseph Pessin, of Wisconsin.

FIRST AFFIRMATIVE

Joseph Pessin, Wisconsin

LADIES AND GENTLEMEN: Before beginning our discussion this evening, we want to welcome to this platform the debating team representing the University of Iowa. It has been a long time since a team representing the University of Iowa has met a team representing the University of Wisconsin, and we are very glad that the newly formed Western Conference Debating League brings us again into the friendly rivalry of former years.

We have met tonight to discuss a very timely subject. The Senate of the United States is now in session and it will soon ratify or reject what is known as the Paris Peace Pact, the Kellogg Peace Treaty, or the Multilateral Treaty. Many of

us have watched the development of this treaty from the time it had its first origin with Mr. Levinson, a Chicago attorney, until to-day when it has received the approval of sixty nations of the world. We have come to feel that this great document, embodying the highest principles of international law, branding war as a crime, and binding all of the nations into a solemn compact for peace, ought to be ratified by the Senate immediately and unanimously. We must remember, Friends, that no idea has ever been accepted without some criticism; no program has ever been adopted without arousing some objection or some protest. We who are friends of this pact are very glad to subject it to the critical analysis which it is to undergo, but feel confident that the most searching scrutiny will reveal enough merit in this proposal to win your approval.

Less than four months ago representatives of fifteen nations met in Paris and signed the Peace Pact. It is a very simple document. It is composed of a short preamble and two short articles. In order to have the wording of this pact before us, allow me to read it to you:

> Article I states, "The high contracting parties solemnly declare in the name of their respective peoples, that they condemn recourse to war for the solution of international controversy, and renounce it as an instrument of national policy in their relations with one another."
> Article II states, "The high contracting parties agree that the settlement or solution of all disputes or conflicts, of whatever nature or of whatever origin they may be, shall never be sought except by pacific means."

Now, in simple language, this pact means that all nations of the world agree to renounce war and to settle differences in a pacific manner. Before we go into a detailed discussion, let us consider this proposal from a common sense point of view. If I were to appear before you to-morrow, at your home or at your office, or wherever you may be, and say to you, "Are you in favor of renouncing war? Do you want the nations of the world to settle their differences in a pacific manner," what would you say? Why, of course, Friends, you would say, "Yes." We are all in favor of renouncing war; we all want peace; that is the national reaction to this document without any argument.

In order to understand the issues of this debate, we would like to ask the gentlemen from Iowa one question: Are you in favor of ratifying the Peace Pact with reservations, or are you opposed to it on any terms? We have come here tonight to pass judgment on this document and we feel that you want to know where the gentlemen from Iowa stand. Are they opposed to this document on any terms, or would they ratify it with reservations? We believe the gentlemen from Iowa will inform you in their first constructive argument.

We of the Affirmative rest our case upon three main points. We believe that the Senate of the United States should ratify the Peace Pact, first, because it is the logical culmination of our foreign policy; second, because it will make the peaceful settlement of international disputes the law of nations; and third, because it holds the world hope for peace.

As first affirmative speaker it will be my purpose to prove that the Senate should ratify this pact because it is the logical culmination of our foreign policy. In 1794 when we were engaged in controversy with England, war seemed inevitable. And yet we sought a peaceful way out. The Jay Treaty was the result and for the first time pacific arbitration was written into our history.

Twenty years later the United States and Canada entered a period of competitive armaments, but again the principle of peaceful relations was invoked and the result has been one hundred and fourteen years of peace with Canada. This is a very important point in our history because it shows clearly the relation of the Paris Peace Pact to our foreign policy. Our relations with Canada have been essentially in the nature of renunciation of war, and to substantiate that, again allow me to quote from Mr. Mackenzie King, Prime Minister of Canada. Writing in the *Christian Century Magazine,* October 11, 1928, p. 1227, Mr. King characterizes our relations with Canada in these words: "They are in the nature of a renunciation of war as an instrument of national policy." In other words, our relations with Canada have been in the nature of renunciation of war and the result has been peaceful relations. After the Civil War we were again engaged in controversy with England over the Alabama claim, but again we sought a pacific way to settle differences and the result has been arbitration.

Now, in 1899, when the Czar of Russia called the first disarmament conference, we expressed our intention, our good will, and sent our delegates. The result was that our delegates changed the entire character of that conference and were instrumental in the formation of The Hague Tribunal. We again expressed our interest in world peace when we attended the second Hague Conference.

In 1907 the Root Treaties, and in 1910, the Taft Treaties, show a growing interest in the peaceful settlement of international disputes, and then came the Bryan Treaties in which we negotiated with twenty-six nations. It is very important to know, Friends, that in the earlier treaties, the Root Treaties, we exempted from arbitration certain disputes that centered about vital interests and national honor, but in the later treaties, in the Bryan Treaties, we expressed our willingness to do just exactly what we are asking the United States to do under the Paris Peace Pact, and that is to settle all disputes, of whatever nature or of whatever origin they may be, in a pacific manner. Now, the Paris Peace Pact grows out of this foreign policy which I have just described. It is true, Friends, that we have not always been able to live up to our principle of peaceful relations, but the moments in our history of which we can feel most proud are those moments in which we conducted our relations in accordance with the high principles expressed in the Paris Peace Pact, which we are asking you to ratify tonight.

Now, a brief history of how the Paris Peace Pact came to be will show how it grows out of our foreign policy. About a year and a half ago Mr. Briand made a speech, and in the course of his address he said this (I am quoting from Mr. Briand's address of April 6, 1927): "France would be willing to subscribe publicly with the United States to any mutual agreement tending to outlaw war, to use an American expression." Mr. Briand says that the idea behind the principle of outlawry of war is an American idea, and the author of that idea is Mr. Levinson, whom I have already mentioned, who for the past ten years has been one of the greatest authorities on the question of war. When Mr. Levinson read Mr. Briand's statement he sailed for France, interviewed French statesmen, and asked them to put Mr. Briand's remarks into

an official form. France did this and submitted the Bilateral Treaty, in which France and the United States agreed to renounce war between them. Mr. Kellogg, guided by this American policy of peace, took France's proposal and converted it into a Multilateral Treaty, in which all of the nations in the world agreed to renounce war. From that point on we took the initiative in bringing this proposal to a successful conclusion. There were some questions asked. These were sent to our Secretary of State and all of them were answered. All the information about the Pact came from the Secretary of State's office. Now, it is very important to note, Friends, that while negotiations continued for over a year, and while many questions were asked, this Treaty was signed by fifteen nations exactly as Mr. Kellogg had proposed it. Not one word of the original draft of the Treaty was changed. It is true that two of the fifteen nations suggested changes, but no reservations were attached to the original draft of this Treaty.

Now, Friends, if we were to summarize our first main contention, we could find no better words than those used by President Coolidge in an address at Wausau, Wisconsin, on August 15, 1928. He said, "It is in accordance with our determination to build up a sentiment and practice among nations more favorable to peace that we have secured the consent of fifteen important nations to the negotiation of a Treaty condemning recourse to war."

It is in accordance with our desire to build up a sentiment more favorable to peace that we have secured the consent of fifteen nations to a Treaty condemning war.

FIRST NEGATIVE

Burton Miller, Iowa

Ladies and Gentlemen: We thank the Wisconsin team for their cordial welcome given to the Iowa debaters tonight. I only wish that I could say that I am as glad to be here as they seem to be glad to have us here. I looked forward with a great deal of anticipation to visiting Wisconsin University and her famous campus, but two days ago I became a victim of this thing called "flu," and coming up here to the north

where the air is clean and cold and pure to recover, I find that you have the same kind of weather we have in Iowa,—rain. My general attitude toward the weather might be compared to my attitude toward the Kellogg Peace Pact, because it is really quite a disappointment, it seems to me, when you consider it carefully. We have been interested in the position taken by the Affirmative tonight and in their stand on this question. I should like to reply to the question asked the Negative so that our stand will also be made clear. They asked us, "Do you favor the Kellogg Peace Pact at all, or, if you do favor it, do you want reservations with it?" I would say that we on the Negative have no time for the Kellogg Peace Pact at all, with or without reservations. We are ready to show, however, that if from some ulterior motives it might be desirable for the United States to affix her signature to this Pact, we certainly would not have any reason to sign the Pact without certain reservations.

In the history given of the Pact by Mr. Pessin, I was interested in the idealistic motives which he attributes to Mr. Briand in his communication with our department. I wonder if Mr. Briand's suggestion, his first suggestion for a Bilateral Treaty of mutual peace and renunciation of war with the United States, couldn't be traced a little more closely to France's recent refusal to participate in a Naval Disarmament Conference with the United States, and to France's desire to obtain a certain renunciation of her war debt to the United States. Of course, that is mere guess work probably, but it seems to me that it is a great deal more in keeping with the attitude and diplomacy that France has shown in the past than any statement that France was dominated by any high minded desire for world peace. That is the first time I ever heard France accused of being desirous of peace.

We are disappointed in the Kellogg Peace Pact and we would advocate the United States refusing to sign this Pact, not because of what is included in the wording of the Pact itself. That wording is very idealistic, as you can easily have judged after hearing it read by the first affirmative speaker. Just realize again for a moment what is included in those two articles in the Pact: First, that all wars will be renounced, and second, that in any specific dispute the solution will be sought

only by pacific means. That is certainly idealistic, and there is nothing to quarrel with at all in the wording of the Pact. But, unfortunately, this Pact, as the Affirmative will insist, is a broad statement, and as such it is going to be subject to interpretation on the part of the signatories. And so the Kellogg Peace Pact isn't the little blotches of ink on a piece of parchment to which the representatives of fifteen nations have fixed their signatures. The Kellogg Peace Pact is the statements as they are interpreted and applied in the nations which have signed the Pact, and these statements as they will continue to be applied by the nations which have signed the Pact. That is the Kellogg Peace Pact which we are considering tonight, and that is the Kellogg Peace Pact which we most heartily disapprove.

Idealism among diplomats is a fine thing, but it is so rare that you tend to become suspicious of it the moment you see it cropping out. Let us consider then, for a few moments, the attitude that nations have actually taken toward this Kellogg Peace Pact which they signed in Paris. One meaning which was read into the Pact immediately, and which is generally recognized by all the people who signed the Pact, and by the authorities on the Pact, such as Briand and Kellogg, is that the right of defensive war shall never be questioned, and that any nation may go to war when such a war is a war of self-defense. That, of course, will be argued by the Affirmative as analogous to ordinary civil and criminal law such as we know it here,—that any man has a right to defend himself. That is very true. I suppose any nation has the right to defend itself. At least nations always have defended themselves, and they insist, in spite of the Kellogg Peace Pact, that they will continue to defend themselves whenever the occasion arises. There is nothing in particular to quarrel with about this reservation on their part, or interpretation, if the Affirmative would rather have us call it interpretation, on the part of nations that they will fight wars of self defense.

We would be willing to grant them that and still favor the Kellogg Peace Pact if it were not for some of the things which they have proceeded to call self-defense: if it were not for some of the causes over which the nations have insisted they can go to war under this right of self-defense.

What are some of these causes? Of course, all nations will insist they have the right to protect themselves against invasion, and that is quite logical, and quite to be expected; nations always have and always will do that. But let us consider further some of these causes which will make possible wars of self-defense. They have also said they can protect themselves against encroachment upon their spheres of special interest. What does that mean? Consider the attitude taken by Great Britain through her representative, Sir Austen Chamberlain. He said that Great Britain has certain spheres of special interest in the world to-day; that Great Britain has never allowed interference with those spheres of special interest; that Great Britain cannot to-day allow interference with those spheres of special interest; and that any encroachment upon those spheres of special interest will constitute aggression on the part of the nation which does encroach. Great Britain, then, whenever any nation interferes with her own special interests, can go to war in self-defense. We all know that Great Britain's empire, and her interests are world wide. There is an old saying that the sun never sets on British soil, and Britain's interests are even more complex and widely scattered than her own territory. In other words, today, or yesterday before the Pact was signed, Great Britain insisted upon defending her world-wide interests with war if necessary. Tomorrow, when the Kellogg Peace Pact is ratified, Great Britain will still insist upon protecting with war, if necessary, all of her world-wide interests. So where is the Pact adding anything to the cause of peace in the case of Great Britain?

Now, the United States comes under this general classification, too. One of the biggest nation-wide worries, when we heard about the Kellogg Peace Pact, (assuming anyone was interested enough in the Pact to get worried,) was that the Monroe Doctrine would be infringed upon. We are going to insist upon the right to maintain warfare under the Monroe Doctrine just as we always have. If we insist upon that right Italy will feel justified in insisting upon the right to protect her interests around the Adriatic. And France and Japan and Russia and all important nations of the world will insist upon the right to protect their special interests.

Another very potent possibility for war under the Kellogg Peace Pact is in the French Alliances. As you all know,

those are with Poland, Czechoslovakia, Yugoslavia, and Roumania. Their purpose, as we all recognize, is to keep Germany in the subjection in which the world war placed her; to prevent Germany from realizing her expansive ambition. France's competition with Germany has been her most fruitful source of war in the last hundred years. Under the Kellogg Peace Pact France has insisted she be permitted to go to war to keep Germany in subjection, if necessary. And virtually the same attitude was taken with France insisting she be allowed to go to war, if necessary, under the Locarno Pact. In other words, since the time is about up, we will summarize our position like this: Before the Kellogg Peace Pact was ever considered, each nation throughout the world could go to war in order to defend its own interests. Now that the Kellogg Peace Pact is nearing culmination, the nations find their positions unchanged. And they can go to war under the Kellogg Peace Pact for the same reasons for which they could go to war before the Kellogg Peace Pact was ever thought of. For that reason, we simply fail to see any way in which the Kellogg Peace Pact is adding anything to the cause of world peace.

SECOND AFFIRMATIVE

Theodore Case, Wisconsin

Mr. Chairman and Friends: The first speaker for the Negative stated in answer to our question that the Negative of Iowa is absolutely opposed to the Paris Peace Pact under any consideration. I should like to call your attention to the significance of that statement. The Iowa team takes the position against the authority and opinion of the world. Expert opinion is almost 100 per cent in favor of the Peace Pact as I shall later point out. The Negative is forced by the exigencies of this case to line up with the all American champion for all-time resistance to any worthy cause—Senator Jimmie Reed. He is the one support that they have in the Senate to-day. There is absolutely no formidable opposition to the Paris Peace Pact, either against the Paris Peace Pact as it stands, or as against it with reservations. They ask us, in short, to take our stand with the doctor who, suffering from the same

illness as sixty of his patients, prescribed a form of treatment for these sixty patients, and then found it necessary at the last moment to repudiate the use of his own medicine.

Continuing the argument for the Affirmative, I wish to prove that the Paris Peace Pact, if ratified by the American Senate, will lead to the pacific adjustment of all international problems. As the law of nations more briefly states, I would assert that the Paris Peace Pact is the preamble to a new body of international law which is necessary to-day. Before I proceed to my main point let us survey the condition of international law in 1914. We found in 1914 that international law was totally unable to keep pace with that fleet footed champion runner, the war problem of the world. And we maintain, Friends, that this Paris Peace Pact will be able to keep pace, or probably overtake and solve completely the war problem of the world, as regards self-defense or any other form of the war problem. Clayton Morrison in his book *Outlawry of War* states that three-fourths of the body of international law consists of rules of war. As to the remaining one-fourth, he says it has to do intimately with the consequences of war. There we have it, Friends. That is what our much revered international law really amounts to; it is a code of war. We want you to favor writing this declaration of independence from war across the obsolete pages of international law. To-day we say war is the supreme court of the nations, and international law is its code. Tomorrow, as we would have it under the Paris Peace Pact, peace would be the supreme court of the nations and a new international law would be its code. We found, with the growth of the traffic problem of international matters, that there were no arterial highways, and no "stop" signs in 1914. There were only "go" signs, signs that read "Go to War," and indeed, Friends, go to war we must if Premier Baldwin was right when he said, "When the next war comes, no important nation will be left out." There is but one qualification to that statement, and that is if the Paris Peace Pact is ratified by the American Senate.

I will now defend my main point. The new pact is a preamble to a new body of international law which will lead to the pacific adjustment of our international problems. There are several reasons why this stand may be taken. First, we read Article II of the Peace Pact which promises essentially

that all difficulties shall be settled by pacific means. This is a promise. In that promise there is implied another promise, and it is that to which I would call your attention. The other promise is to the effect that the nations solemnly declare their belief that a future international law will be developed. The second reason is that there is universal agreement of expert opinion to the effect that the Pact is, primarily, but a preamble to a new international law. I quote from Wilbur Forrest, New York *Herald Tribune,* August 26, who states: "The practical side of the Kellogg Peace Pact is yet to be developed and extended at the conference tables." Mr. Briand of France has frequently maintained that the Peace Pact is but the basis for a new principle of law against war. Secretary Kellogg has frequently reiterated the same position, and what have the efforts of these two men, Mr. Kellogg and Mr. Briand, resulted in? They have resulted in this Kellogg Peace Pact occupying attention as no subject has heretofore in the history of the world. John Dewey in the *New Republic* on May 16 goes on to say: "No one can or does believe that the Kellogg Peace Pact is anything but preliminary to a new code of international law." He went on to say that all active proponents of the idea, Senator Borah, Mr. Levinson, Professor Shotwell, and others, also hold that the establishment of the Kellogg Peace Pact would be preliminary to a new code of international law, and would establish a new code against war. I could quote similar statements—I have them here—from President Coolidge, from Charles Evans Hughes, from Mr. Elihu Root, from Senator Borah and others. My colleague, the third speaker, will add to this list of eminent authorities, eminent international figures, who are definitely persuaded that the Kellogg Peace Pact will lead to fruitful results. We read from the *Christian Century,* December 13, an article by the editor, Mr. Morrison: He states, "When ratified a new international law will have been created. . . ." That is an adequate summary of my case as the second speaker.

But there is a third reason, very convincing, that we need to consider. In 1919 the League of Nations was subject to universal discussion. At that time it was predicted by Elihu Root and others that new international law would be begun and developed by the League. This promise has now been realized. I quote from Mr. Hudson, an eminent authority on

international law. He stated in the *Annals of the American Academy* for 1923: "The fact has not yet percolated through our newspapers that we have begun in the last three years to get an entirely new body of international law." The promise of Elihu Root has at last been partly realized. We would supplement his work by going farther than the League Committee has gone up to the present time.

There is another example of an analogy to the Kellogg Peace Pact situation. I would call your attention to these quotations and I should like to ask you as I read them to think whether these statements were made in reference to the Kellogg Peace Pact or in reference to something else, besides, also, whether they might be made in reference to the Kellogg Peace Pact.

"It is an impossible idea."

"It is a shadow without substance."

"It is very dangerous to our interests."

"It is an ideal phantom."

Ladies and Gentlemen, could there be any more persuasive or convincing argument, any more eloquent testimonial to the value of the Kellogg Peace Pact than the fact that these statements were made in reference to your United States Constitution at the time when it was born. The Kellogg Peace Pact, in order to be a preamble to a new international law, must have universal support.

It has that support. At the present time there are sixty nations definitely in favor of the Kellogg Peace Pact. There are only a few Brazilian antelopes, a few naked Canary Islanders, and a handful of Eskimos inside the Arctic Circle at the present time opposed to the Kellogg Peace Treaty. But these sixty nations are practically certain to ratify the Pact, for I would call your attention to the fact that although they have merely signed it, the Parliamentary forms of government existing in those countries means that signing a thing by their plenipotentiaries is practically the same thing as ratifying it. Ratification is a mere formality with those governments. But in order that the Kellogg Peace Pact may very definitely be a preamble to a new body of international law there is needed another requirement, and that is that American ratification must be guaranteed. Friends, that is practically certain at the present time, I am very glad to say, for these reasons: first, the party

leaders of this nation are unanimous in favor of the Kellogg Peace Pact. Those of you who are Republicans know your party is in line with the Kellogg Peace Pact without reservation; those of you who are Democrats know that the same holds for your party. In the Senate debate there is at present no formidable objection to the Kellogg Peace Pact, either with or without reservations. There is nation-wide enthusiasm for it. There is wide recognition of its great merits. As our first affirmative speaker said, "It is an American made product and America is at last awake to its international responsibility." For these reasons we guarantee American acceptance.

But there is one final question and that is whether all causes of war can be settled peacefully. That is proven by Professor J. Lasky who says, "There is no such thing as a dispute not capable of settlement."

My time is up. I thank you.

SECOND NEGATIVE

Fred Webber, Iowa

Ladies and Gentlemen: I have two purposes in coming before you this evening. The first and more important is to demonstrate my new style of hair dress,* and second, and less important, to discuss the Secretary of State's proposal for bigger and better wars. The preceding speaker on the Affirmative enumerated various classes of people opposed to the Kellogg Peace Pact. I don't know just which class he meant to include us in. Really, I think the gentlemen of the opposition are too optimistic when they say the Kellogg Peace Pact is completely going to solve the peace problem—going to lead ultimately to the complete solution of the whole thing. I say I think they are optimistic, and somebody said a pessimist is a man that has to live with an optimist, so we are the pessimists tonight. We don't believe it will do that. Mr. Case also said something about the fact that we were against the expert authority of the whole world. Well, it is too bad for the expert authority, but we really can't help it, because we see, as my colleague has pointed out, certain things in the

* Mr. Wilbur had recently been in an automobile accident and wore a turban-like bandage covering most of his head.

Kellogg Peace Pact that destroy its value. As Mr. Miller said, if we could ratify the Kellogg Peace Pact, as the first speaker of the opposition read it, that would be all right as far as we were concerned, but the trouble is we can't ratify it that way. We have to ratify it as Europe has interpreted it and we don't believe we should. We also think there is some explanation for the fact that the expert opinion of the world, if it be expert, is in favor of the Kellogg Peace Pact. The Senators are in favor of it, that is, the Foreign Relations Committee. They think it is going to operate to get the Naval Bill passed. They say, "We are going to renounce war and so the people can't accuse us of having any ulterior motive in passing the Naval Bill," and so they are supporting the Kellogg Peace Pact. That is a common parliamentary practice—supporting one thing in order to get something else, as I will point out later in my talk this evening. There is also a reason and an explanation for the fact that the European statesmen are in favor of the Kellogg Peace Pact. One other point I should like to mention to the opposition, and that was in the first speech. When Mr. Pessin outlined the historical interest of the United States in the problem of world peace, he said that the Kellogg Peace Pact rose out of our foreign policy. We should like to know what of it, what difference does it make? If the thing isn't good you are not going to make it good by lining it up with the United States foreign policy. I know we are the greatest nation of the world, we have no ulterior motives in any of our foreign relations and all that, but at the same time, if a thing is bad let us recognize it, and not say it is good because it is the creation of some American statesman.

The general case of the opposition is that the Kellogg Peace Pact is going to solve problems, going to lead ultimately to the peaceful solution of all disputes. We should like the gentlemen of the opposition to explain how that is going to be brought about in a specific case. For instance, how is the Kellogg Peace Pact going to work? What effect would it have had if it had existed in 1914? If Persia and Afghanistan get into a dispute next year and the Kellogg Peace Pact has been ratified and is in full force, how is it going to have any effect on Persia and Afghanistan? We should like to know how it is going to be done. The gentlemen haven't told us

yet. They have said it will be done. We believe it will not. My colleague, the first speaker, has pointed out why we believe it will not work, because of the interpretations placed on it by other nations. So, the fact is that the philosophy of war is still predominant in the world, and as long as it is predomindant in the world, no matter how many treaties you have you are not going to solve the problem by peaceful means. Treaties do not constitute public opinion. Treaties do not require nations to do anything when they want to do something else.

Now then, we are also opposed to the Kellogg Peace Treaty for a second reason, and that is that it involves us undesirably in the affairs of Europe. We believe that affairs in Europe are in a bad state. Recognizing that they are in bad state we believe that you can't hatch doves out of owls' eggs, and we don't want to get mixed up in that situation. But we will get mixed up by ratifying the Kellogg Peace Pact, because under the interpretations placed on the Pact by Great Britain, France, and other nations in the League, the United States gives the obligation of the League of Nations a legal sanction. The European nations have said, "We ratify this Pact on this condition,—that it does not abridge our right to carry on the obligations of the League," and the United States would have to say, "All right, go right ahead." We recognize the legal status of the European obligations in the League, but at times those obligations of the League affect directly the United States, and it is there that we object because we give them a legal sanction directly to affect us. Let me read for you Article 16 of the Covenant of the League of Nations:

> "Should any member of the League resort to war in disregard of its covenants under Articles 12, 13, or 15, it shall ipso facto be deemed to have committed an act of war against all other members of the League, which hereby undertake immediately to subject it to the severance of all trade or financial relations, the prohibition of all intercourse between their nationals and the nationals of the covenant-breaking state and the prevention of all financial, commercial, or personal intercourse between the nationals of the covenant-breaking state and the nationals of any other state, whether a member of the League or not."

In other words, if Serbia wants to reclaim some of the parts of other nations that are inhabited by Serbians, and the United States recognized that Serbia should have that territory, but the League of Nations declares that to be an act of aggression, the United States is placed in an embarrassing situation. We have recognized the legality of the League's operation, and at the same time we recognize the justice of Serbia's demand for territory inhabited by Serbians. What is the United States going to do in a case of that kind? It makes us face a dilemma. The United States would have to meet that dilemma. We ask the gentlemen of the opposition to show us what the United States would do and maintain its obligations?

I pointed out that the United States through interpretation of the treaty would become legally involved in the affairs of Europe. But not only would she become legally involved; she would also assume a moral obligation. The United States joins hands with Europe in declaring aggressive war to be an evil. We join hands with them in declaring certain methods of treating that evil as justified. We say the League of Nations is all right, and we will not affect your right to carry on the work of the League. Now then, can the United States morally withdraw herself from those obligations? She has recognized them to be legal and just, and she has recognized their object as good. Can she withdraw herself from those obligations?

There is yet a third reason why the United States would become involved in the affairs of Europe. That is the state of public opinion in Europe. It is well known that public opinion has some force, possibly not much, but it has some. Let us consider what the public opinion of Europe is with respect to this Pact, and this, by the way, is where I promised to show why European statesmen are in favor of the Kellogg Peace Pact. Sir Austen Chamberlain, Foreign Minister of Great Britain, in the House of Commons, July 30, says, "If the American nation ranges itself behind its own treaty, then indeed the signature of the treaty will be an additional and most formidable deterrent of war." He means that the force of the United States is going to be made available to settle problems of the world. How else can we be a formidable deterrent of war unless our force is placed at their disposal?

The Paris newspaper, *Le Matin* states, "Inasmuch as it is now agreed that all existing treaties, especially the covenant

of the League, are confirmed and strengthened, and considering that the signatory nations retain liberty of action against violations of the compact, the United States government becomes the moral guardian of the Peace treaty and subsequent treaties."

Frank H. Simonds, who for many years has been a trained observer in European circles, says, "European public opinion believes that as a consequence of the new treaty the United States will join in any League action to employ military and naval force against any nation pronounced by the League authority to be an aggressor or, at the very least, will respect the naval blockade and the financial and economic boycott which the same body may pronounce against any power."

We believe that the United States should not become involved in the affairs of Europe. At the end of the World War the Treaty of Versailles set up a situation in Europe which is based on the old principle of a balance of power, and the Allies placed in that settlement many points which are bound to lead to further disagreements. It may be most of these will be settled without war, but it is very likely that most of them will not be settled without war. Lloyd George has said that Europe is a seething cauldron of international hates and prejudices and we believe that the United States should not get mixed up in a mess of that kind. And regardless of the expert opinion of the world, the people of the United States evidently believe the same thing.

THIRD AFFIRMATIVE

Walter Graunke, Wisconsin

FRIENDS: The opposition has made several broad charges here this evening which we believe have not been substantiated. Now, immediately after the World War we prayed for peace, and today when our plans are on the verge of realization, we try to crucify the man who sincerely endeavored to give the world something constructive which will actually bring about world peace. As my colleague has said, there is always opposition to every proposal. We had it when we signed our Declaration of Independence; we had it when our Constitu-

tion was in the process of formation; and we even have it in the rural districts when they decide to put a new shingled roof on the old red school house. Our opponents have levied the charge of insincerity at the diplomats of Europe. That is a very serious charge and we should like to see it substantiated by good concrete evidence. It is well to remember that the opposition tonight say that this Pact isn't workable because it has no machinery. In 1920 the opponents to the League of Nations in Congress said "This thing has too many teeth in it," and today they say, "It is a toothless wonder and we can't have anything to do with it at all."

The opposition have said that there are different interpretations to this Pact. Each nation, in other words, has reserved certain things that it can do. Allow me to quote from Secretary Kellogg's speech, given on Armistice Day, when he said, "Finally the countries were satisfied that no modification of the treaty was necessary to meet their views." There are no interpretations or reservations which go with the Kellogg Peace Pact.

Friends, thus far in this debate my colleagues have shown you that the United States Senate should ratify this Pact because it is an unmodified American product and a logical culmination of our peace policy. The second speaker has shown that the ratification of this Pact will make the peaceful adjustment of international difficulties the law of nations; and, in closing this constructive argument for the Affirmative this evening, I wish to show you that the Pact embodies the world hope for peace: First, because it seeks to outlaw war; second, because it will strengthen the peace party in every nation; and third, because it represents the ultimate ideal toward which we must move. We believe that the outlawry of war, as provided by the Kellogg Peace Pact, will have precisely the same effect in international relations that the outlawry of duelling had in individual relations. Duelling, as you know, was kept going as a legal institution for hundreds of years, and various codes which were prepared and revamped from time to time to meet the ever increasing evil all failed. Finally the happy discovery was made that the best way to get rid of this evil was to condemn it by law, and ever since that time duelling as an institution ceased to exist, and codes of duelling became museum exhibits.

One of the many fallacies which obtain in war and peace thinking is that you cannot get rid of war until you remove all causes of war. There is no plan which is more impracticable or theoretical than that based upon the removal of the causes of war before you can ever hope to have world peace. Greed is a cause of war, for example; jealousy, enmity, hatred, lust for power, lust for riches, international rivalry, commercial rivalry, are all causes for war. Can we ever remove them? Probably not for a long time to come. And therefore, Friends, we believe that by attacking the problem from this angle, by outlawing war and making it illegal, the peace party of the world will gain a foothold and thus be able eventually to bring about world peace.

Did we remove the causes of slavery, of piracy, of theft and murder, before we outlawed them? Is there any enactment of our statute books to-day which awaited its enactment until the causes of that crime were removed? There are none, and we believe that the outlawry of war will have precisely the same effect on international relations that the outlawry of duelling had on individual relations, and that the ratification of this Pact will strengthen the peace party in every nation. During the late World War, as you all know, the militarists and the jingoes were the patriots; they are always the orthodox. The lovers of peace are the heretics, and we believe that the ratification of the Pact will automatically reverse the positions of these two groups. The militarists will have to be the conscientious objectors. The advocate of peace will then become the patriot, and he will have with him all the moral and emotional support of the nations.

We believe that when we can say that the Paris Peace Pact will stimulate and give momentum to the peace parties in all nations of the world, we have said enough to show you that the proposal we sponsor has teeth in it, the teeth of public opinion. You may say, "Well and good, it sounds rosy, but that is merely visionary; that doesn't mean anything." On that point, I am going to quote President Coolidge from his message to Congress delivered December 12, 1928. Now, I am sure, in spite of differences some of you may have with President Coolidge's idea, you will all agree he is not visionary. He is admittedly very practical,

and here's what he said: "The Paris Peace Pact is a new standard in the world around which can rally the informed and enlightened opinion of nations to prevent their governments from being forced into hostile action. The observance of this covenant, so simple and so straightforward, promises more for the peace of the world than any other agreement ever negotiated among nations." And, Friends, that is the statement of President Coolidge, and we are sure that he had all the objections presented to him which the opposition are presenting to us this evening.

This brings us to our final contention, namely, that the Pact represents the ultimate ideal toward which civilization and all nations of the world must move. Call the Pact visionary and idealistic—call it what you may, Friends—but the fact remains that it was subscribed to by the leading statesmen and nations of the world. Sixty nations have already signified their intention of ratifying the Pact. Why this universal sentiment in favor of the Pact? Why this universal sentiment and acclaim to accept it wholeheartedly if it is a mere sham, and born in insincerity, as the opposition would have you believe here this evening. We of the Affirmative wish it to be clearly understood that the ratification of this Pact will not usher in a new era overnight. We don't contend that at all. We don't come before you like the operator of a medicine show, saying, "A few drops of this precious ointment will restore the original lustre to the old piano stool, or make the old flivver of international harmony perform on all four cylinders, or prevent international epileptic fits." We don't contend that at all; but we do contend that the seed of peace must be sown now if we wish to reach that goal which the Kellogg Peace Pact sets up.

The ideals of democracy in government were established thousands of years ago and the goal has not yet been reached. The ideals of freedom of speech, of thought, and the abolition of human slavery were set up centuries ago and have but recently been realized. The teachings of the Great Teacher were enunciated from the Mount nearly two thousand years ago and have not yet been realized fully; but who, Ladies and Gentlemen, would say that these ideals are impracticable and theoretical, merely because they represent

centuries of martyrdom and sacrifice? We of the Affirmative contend that any proposal such as the Kellogg Peace Pact cannot be judged by its immediate results, but only by its final objective.

In closing I quote this statement from Prime Minister Stanley Baldwin when he showed the alternative open to Europe and the world. "The alternative before us in Europe is very simple. And the choice ought to be easy. We must either keep faith with the spirit of the Pact that we have signed, or in time we must go down that steep place all together like the Scriptural swine and perish eternally."

THIRD NEGATIVE

Lyle Quinn, Iowa

It seems to be quite necessary to collect a preponderance of evidence. We feel that one thing is apparent tonight, and that is that the last speakers of both sides seem to carry great weight with them.* There is one thing that has been very difficult for us to understand and that is just why this great audience has turned out tonight, turned out in a rain which is very like the rain we had down in Iowa some weeks ago when you carried away our goal post. We have made a scientific study, we think, of the interest that the American public shows in this Kellogg Peace Pact, and it isn't in keeping with this turnout tonight, so the idea has occurred to us that perhaps the audience has come, not so much to hear about the Kellogg Peace Pact, but because of their interest in the stenographers taking down these words being said. It is something unusual in inter-collegiate debates.

This scientific study I mention took place today on our trip from Iowa City. We thought it would be a very desirable thing to know what the American public thought in regard to this Kellogg Peace Pact, so we did make a very scientific study of the situation on the train. We divided the train into three sections. One of my colleagues took the baggage car and smoker; the other took the next few cars, and I was assigned to the dining car and parlor car. I

* The reference is to the fact that the third speakers on each team were quite rotund.

found a very interesting situation there and when we got back and tabulated our results, we found that 98 per cent of the people were in favor of the Kellogg Peace Pact. We would ask them, "What do you think of the Kellogg Peace Pact, are you in favor of it or not? Ninety-eight per cent of them were in favor of it but we found that 99 per cent of them thought we were talking of a new form of breakfast food, and in the dining car 100 per cent thought that was true.

So far as I have been able to comprehend the debate this evening, so far as I have been able to analyze the affirmative case, they have been proposing an idealistic thing called the Kellogg Peace Pact. They say because we have written here two very specific articles which state very high ideals, therefore it is going to be a success and we should adhere to it without reservation. We could search the annals of history and we could find other idealistic forms which have been proposed, but I am sorry to say they have not always succeeded. The one I have in mind is that idealistic thing proposed in Paris and known as the Pact of Paris at first, in 1815, when three great nations, Russia, I think it was, and Austria, and Prussia met there. Let me quote to you word for word the thing that was written into that pact, and as you will see the spirit is almost identical to that of the Kellogg Peace Pact. "These governments having met here, having been called in the name of the very holy and indivisible Trinity, these monarchs having reached the conviction that the policy of nations should be guided by the supreme truth, solemnly declare their unchangeable determination to accept no other rule of conduct either in government of their respective countries, or in their political relations with one another than those which the holy religion of our Savior teaches, the precepts of justice, Christian charity, and peace." That was called the Holy Alliance. It is very similar, the terminology is almost identical with that of the Paris Peace Treaty, but we on the Negative contend that is no proof the thing is going to be a success. Why did the Holy Alliance fail? I am not very good on history, but I believe it failed because of the Metternich diplomacy, because of the exceptions which entered in.

The gentlemen of the Affirmative are talking about these two ideal things being set up. They are all right; we find no fault with them. The thing we are contending with, the Kellogg Peace Pact as it is to-day, is not those two articles which have been proposed. As we have pointed out, the nations of Europe have reserved to themselves the right to fight all wars of self defense. We ordinarily think wars of self defense are justified when one nation invades the territory of another. But Great Britain makes it clear that she does not consider it that way. She says, "We have zones of interest throughout the world and repulsion of any infringement on those is a measure of self defense." France points out what she considers self defense, and reserves the right to fight all wars under the treaties of Alliance and the Locarno Pacts. We can see that Mr. Henry Cabot Lodge was justified when he said that "all the exceptions and reservations reduce the Kellogg Pact to an absurdity." They have quoted too, at length, opinions of great men thought to be authorities on the subject, especially one James T. Shotwell. The Affirmative contend that their quotations—the men they quote from—are all good authorities, but we contend further these men are expressing opinions as regards these two articles probably and not the Kellogg Pact as it is to-day; for instance, Mr. Shotwell, who has been one of the Affirmative's leading authorities. *Harper's Magazine* for December records a letter written by Mr. Shotwell to Henry Cabot Lodge, declaring, "so long as there seems to be any chance of modification or of reservation to the pact I will criticise it." The authorities the gentlemen of the Affirmative have introduced, have concerned themselves with the Kellogg Peace Pact as it was and not as it is. As it is with exceptions and reservations put into it by the European diplomats, these same authorities are antagonistic to it.

Those men are certainly justified in their view, for when the Pact has been so changed as to make possible all wars of self defense it certainly constitutes a reservation of the highest order. France and England and the other nations have reserved not only the right to fight wars of self defense, but they have made it very clear and specific that they themselves, not a court of the nations, but each individual

country, is to decide for itself just what constitutes a war of self defense. Can the gentlemen of the Negative show us just one war in the past where the nations fighting haven't insisted that they were fighting a war of self-defense?

Professor Borchard of Yale puts it very clearly when he says, "The Treaty as now qualified by the French and British reservations constitutes no renunciation or outlawry of war but in fact and in law a solemn sanction for all wars mentioned in the exceptions and qualifications," which as we have shown includes all wars except those that have never taken place.

So you can see how the whole situation is changed when we examine the significance of the interpretations.

The Affirmative have insisted that the Pact will outlaw all wars. Will it? It is going to outlaw all wars except wars of self defense, all wars except those fought under the Treaty of Alliances, except those fought under the Locarno Pact. In other words, we don't outlaw anything at all, and that is where our stand comes tonight. We say this Kellogg Peace Pact isn't the thing which should be accepted, because it re-emphasizes the legality of war. In the provision for self defense the nations have made it easier to go to war. You know as well as I do, how in the past, one of the most essential things before a war was started was for each nation participating in the war to instigate sufficient propaganda to make public opinion realize it was a war of self defense. German historians have been working ever since the war to show that Germany was fighting a war of self defense, and there is some ground for the argument. They say that she was encompassed by allied enemies pushing in on all sides and that she had to push these enemies aside before they choked her. It was self defense for Germany.

If you have this Kellogg Peace Pact it would be much easier for all nations of the world to justify their going to war under the provision of self defense, because we have legally given them the right to decide what is self defense. Perhaps the gentlemen might say, and I have anticipated that they would say, that these proposals by the European

ministers do not constitute reservations. I am in fact very much disappointed, because I came here prepared tonight to give a lengthy address to prove to you that the European ministers, when they sign a document, have an understanding that that virtually amounts to ratification; that the parliamentary practice of England and France has one peculiar aspect. They have what they call legislative responsibility, but they have executive leadership.

In other words, when the cabinet comes in with a proposal, they know before they make that proposal that the legislative body is in favor of it. I had an instructor in school who used this analogy: "Why doesn't a cook stir his dough with his elbow? It just isn't done." So we may ask, "Why doesn't the legislature of England or France reject the proposals of the council?" And the answer might be, "It just isn't done, that's all." In ninety-nine cases out of a hundred, so says the historian, when the cabinet comes in with a proposal, the legislature simply adheres. And the gentlemen of the Affirmative have recognized this fact, for they have said in the course of their discussion, that, "Ratification is a mere formality of these governments." So you can see that these things which these governments have proposed, as Sir Austen Chamberlain and the gentlemen of the Affirmative make it very clear, "constitute virtually a reservation on their part."

But in the United States we have a peculiarly different situation. Here if we are to have a reservation it must be proposed and then ratified by the Senate. We are familiar with situations when our secretaries of state and even our presidents have proposed measures in treaties and have had the Senate ride over them. It is not an uncommon thing, but it is peculiar to our type of government.

Can you see the situation as it now is? The gentlemen of the Affirmative by their admission and by their insistence upon that admission are standing upon the platform asking us to adhere to this proposal of the Kellogg Peace Pact, the two original articles plus all the interpretations that have been tacked upon them by the diplomats of all the nations—insisting also that our country join this thing without any reservation whatsoever.

The Negative have argued that the people of the United States should not accept this Kellogg Peace Pact because it has been so changed by European exceptions as to render it useless. For as James T. Shotwell and other affirmative authorities agree, if you change those articles of first impression, you destroy the whole effect of the treaty—not only destroy it, but endanger the peace of the world by making it easier for the nations of the world to go to war.

Dr. Hunt: We have listened to the constructive arguments. We will now listen to the rebuttals, reversing the order, Negative first, and Affirmative second. Mr. Miller of Iowa.

FIRST NEGATIVE REBUTTAL

Burton Miller, Iowa

Ladies and Gentlemen: I am rather interested in the logic advanced by the Affirmative tonight. They have said that you can't take any question of opposition to the Kellogg Treaty too seriously because there have been oppositions to every proposal that has been brought up, worthy or otherwise. There were even objections to our own Constitution of the United States. I assume, then, that the logic follows that any proposal to which objections are raised must be therefore desirable. May I remind the Affirmative that not only have there been objections to every proposal which has been presented, there have also been people in favor of every proposal which has been presented, so I fail to see where their argument has any basis at all.

They have assumed that the fact that people are in favor of the Kellogg Peace Pact makes it necessarily desirable. And as a result they have based the great share of their argument upon the presentation of countless authorities whom they say favor the Kellogg Peace Pact, and because these people are in favor of it, therefore it must necessarily be desirable. Let us remind them not only are there people in favor of it, there are just as many people opposed to it. They have quoted countless authorities. I was interested in a couple of them, for instance Kellogg and Briand. It is indeed surprising that the people responsible for the Kellogg Peace Pact should favor it in their statements. We

could quote just as many authorities opposed to it, for example, Lodge and Simonds. Borchard, an outstanding authority on international law in this country, says the Pact constitutes the most sweeping recognition of war the world has ever seen. That statement is worth any number of statements by politicians. There are authorities in favor of the Kellogg Peace Pact and authorities opposed to it, and when we recognize this fact and discount mere quotations of authorities, what do we have left on the Affirmative? Anyway, it isn't important whether politicians in some exalted moment praise or blame the Kellogg Peace Pact.

If you are going to look for statements in regard to the Kellogg Peace Pact, let us look for significant statements. Why don't the Affirmative remind us of the statement made by Sir Austen Chamberlain, representative of Great Britain, whose act in signing the Kellogg Peace Pact will bind Great Britain as a matter of course by the very statement of the Affirmative? What did Sir Austen Chamberlain say? He said Great Britain has always had special spheres of interest, Great Britain still has those, and Great Britain will protect those interests by war if necessary. There, it seems to me, is a significant statement. There is a statement which really affects the Pact. There is a statement which says the Kellogg Peace Pact is nothing, Great Britain will fight for the same things for which she has always fought.

They make a great deal of this question of public opinion, telling us we are all hand in hand united in favor of the Kellogg Peace Pact. Well, I question the sweeping effect of this opinion. I think the people of today are probably more interested in reading about sports or discussing breakfast food than they are in the Kellogg Peace Pact. How many of the people on the street does the Kellogg Peace Pact and its technicalities reach? Very few. The people on the street are not interested in the Kellogg Peace Pact. They are interested, like those people in Bolivia today, in the public sentiment of the time. When propaganda is placed before them in the newspapers, the old war spirit is generated just as it is today in Bolivia. The Kellogg Peace Pact isn't even considered.

The Affirmative asked us one rather important question, it seems to me. They said, if you go up to the average

person and say, "Are you in favor of renouncing war?" that person will say "Yes." That is undeniably true. But if you go up to the average American and say, "Are you in favor of renouncing the Monroe Doctrine?" he will say "No." And yet the Monroe Doctrine is our most fruitful source of war today. If you go to a Frenchman and ask him if he is in favor of renouncing the Treaties of Alliance, he will say "No," or the French equivalent of no. It is all right for them to renounce war in theory, but when it comes to a question of vital concern to their nation they are not interested in the question of whether or not war is renounced. They are interested in their own national interest, and they will continue to be interested in the nation's interest whether the Kellogg Peace Pact is signed or not, and the world will continue to go to war over national interests whether the Kellogg Peace Pact is signed or not by the statements, the interpretations which have already been made by the nations throughout the world today.

FIRST AFFIRMATIVE REBUTTAL

Joseph Pessin, Wisconsin

FRIENDS: After sizing up Mr. Miller and listening to the weighty arguments of the three negative speakers, I hesitate to launch an attack, but in view of the fact that I have adequate physical support in the form of a 220 pound law student, I feel I may proceed with a reasonable degree of assurance.

We wish to thank the gentlemen from Iowa for their splendid entertainment here tonight, but let's see definitely what criticisms they have leveled at our proposal. We have come here asking your approval to a document which President Butler of Columbia University said opens the gate to international peace. We have come here asking your approval of a document which the Archbishop of Canterbury characterized in these words when he addressed the House of Lords, on May 15: "I believe this proposal will stand out in history as one of the most remarkable that has been made in the story of the civilization of the world." We are asking your approval to a document which President Coolidge says holds greater hope for peaceful relations

than was ever before given to the world, and the gentlemen of the Negative, who do not line up with these authorities, say it is too bad for the authorities. Evidently the gentlemen from Iowa have some information which Secretary Kellogg, which Mr. Chamberlain, which Mr. King of Canada, which Dr. Stresemann, and eleven other representatives who signed the Peace Pact did not have.

Do you suppose, Friends, that the gentlemen who signed this treaty and the sixty nations who approved it did not consider these objections which our friends from Iowa have raised, and in spite of that fact gone on record in favor of this proposal? Friends, objections have always been raised to proposals. We have pointed out that when the Constitution was ratified there were relatively more objections to the United States Constitution than there are objections to this proposal. Let us consider what objections the gentlemen have raised.

They object because a nation has a right to go to war in self defense. Let us not consider the imaginary wars of self defense that the gentlemen have raised. We feel they have let their imaginations run away with them. Here are the facts. When these statesmen gathered in Europe the question arose whether or not a nation had a right to go to war in defense of her own country, and it was agreed that every nation has a right to defend her own territory. I wish to quote from Secretary Kellogg's address of November 11: "The question was raised as to whether this Treaty prevented a country from defending itself in the event of attack. It seemed to me incomprehensible that any nation should believe that a country could be deprived of its legitimate right of self defense." The right of self defense is inherent in every treaty and it isn't necessary to define it in this instance.

The gentlemen also object because this will involve us in the League of Nations. We wish the gentlemen of the opposition would substantiate that argument with some authorities. Perhaps we could remove their objections by quoting from Mr. Shotwell who said in the *Current History Magazine,* November 28, page 181: "The Kellogg Proposal does not involve us in the League of Nations."

If the gentlemen from Iowa are opposed to the League of Nations because it resorts to force, then they ought to be in favor of this treaty because it removes that objection. It gives the peaceful element of the covenant of the League of Nations a chance to function. As long as the nations of the world adhere to the Paris Peace Pact, then the objection that the League of Nations resorts to war mechanism is removed.

SECOND NEGATIVE REBUTTAL

Lyle Quinn, Iowa

I am concerned in the first place with the gentleman's last reference to our friend, Mr. Shotwell. If we can assume that the gentlemen of the Affirmative are willing to rest this debate on the authority of Mr. Shotwell, we of the Negative will concur. We will grant Mr. Shotwell is the authority upon which this debate should be decided, as they seem to insist he is. We will grant that our joining in the Kellogg Peace Pact will not endanger us in the League of Nations, but we insist if we do that, they must agree with Mr. Shotwell when he says he cannot adhere to this Kellogg Peace Pact with the reservations which have been proposed, and therefore rejecting the other statement. His statement as to the objection was made in December, and the other statement they quoted to you came in November.

They have raised again, of course, the issue of self defense, raising the question as to whether or not a nation has the right of legitimate self defense. They are insisting under all treaties a nation does have the right of legitimate self defense, to guard its territory against aggression. Perhaps that is all right. We can concede that. But the reservations claimed by Sir Austen Chamberlain and the French ministers are to the effect that any interference with the English or British welfare throughout the world constitutes a degree of attack warranting self defense. If there is British capital invested in China and there is interference by the Chinese or anyone else, that is a cause of self defense by the British Empire. That is the provision incorporated in the Kellogg Peace Pact, doing away with that conception of self defense

as a means of territorial aggression. The British have changed that so as to make possible all wars. We asked the gentlemen to point to any war which could not be laid at the door of self defense. Our point is that all nations have to do under this Kellogg Peace Pact, as it has been changed and virtually ratified, is to sound the magic words "self defense," and then they can go to war under the old rules.

They quoted to you the Archbishop of Canterbury and other authorities. We don't want to hinge the debate on authorities. We can cite just as many on one side as another, maybe ninety-nine against a hundred, something like that, but authorities are nothing to decide a debate on. When I was a little boy in high school we debated on the League of Nations, and I was interested in what the great men of the world, Hughes and Wilson, thought of it. Woodrow Wilson approved of it and I was trying to approve of it so I thought perhaps he would give me a statement. I wrote to him, as a little boy will, and I was surprised to get an answer back from his secretary, I suppose, and it contained a bit of advice that seemed very good. He said, "Mr. Wilson does not care to make a statement on this because he feels that the only way to debate a question of this kind is to debate it on its merits and not by the opinions of those thought to be authorities, as you can get just as many authorities on one side as the other."

These reservations have been proposed by those European governments. They have changed the whole aspect of the treaty. Instead of going forward we are going backward, because it is going to be easy for the nation to justify an act of aggression under self defense. So we say the United States should not ratify this thing until European nations cast aside, throw over their cabinets and get new cabinets and ratify this thing as it was. We will have no objection to ratifying the pact under the idealistic terms if they can cast aside their exceptions and their reservations.

SECOND AFFIRMATIVE REBUTTAL

Theodore Case, Wisconsin

FRIENDS: The Negative have asked us how we are going to enforce the Kellogg Pact and they criticize us because

we refuse to answer the question of how we are going to enforce it. The Affirmative this evening isn't required to answer that question. We are merely required to indicate what authorities believe. They remind me of a situation that might exist in reference to the chapter of Genesis of the Bible. They would be like the folks who, on Wednesday night of Genesis, criticized the good Creator for not having advanced the work of the world as early as Wednesday when it really took Him until Saturday. They would have called a mass meeting perhaps and met at the Town Hall on Thursday night to demand of the Lord more forward action.

They have raised the question of self defense, and they think it is a vital argument which destroys the form of the Peace Pact at the present time, but we would call your attention to an analogy to this situation. The presence of a policeman at a time when I am threatened by a murderer discharges me of the obligation of defending myself, but if there isn't a policeman handy I must defend myself for there is no alternative.

Now, Ladies and Gentlemen, after the Kellogg Peace Pact has gone through, after it has been the preamble to a new law, after a new law is developed, then we will have a policeman to take care of recalcitrant nations; then the right of self defense will devolve upon higher presences, the policeman and the new international law.

They have asked whether or not Europe is insincere, and they have stated essentially because Europe is insincere therefore we should not ratify the Peace Pact. They have failed utterly to show how insincerity has anything to do with it. If it does exist—and they have failed to show us that—if Europe was insincere, they have wrought better than they thought. The attitude of "Watch them foreigners, you can't watch them too close. That boy will slip in five bananas when I ordered six"—never breeds international friendships. The Negative would feed us this emotional moonshine despite the fact that it is blinding and leads to emotional prejudices.

They have cited Mr. Borchard and Mr. Lodge as authorities on international law. How many of you ever heard of these gentlemen before you came here? Compare them with

these substantial authorities on international law: Charles Evans Hughes, Elihu Root, Senator Borah, Mr. Levinson, John Dewey, President Coolidge, President-elect Hoover. Do we know these men? Are they authorities on international law? Who is this gentleman Lodge to whom they refer? He isn't Henry Cabot Lodge of 1920 fame. He is a recent graduate of Harvard University, a grandson of Senator Lodge and at the present time a minor writer eking out his living on journalism.

The Negative, this evening, has insisted on a splendid isolation and, when we figure the question of authorities, we must agree it is easy to see why they insist upon splendid isolation, for in reference to the matter of authority, that is where the gentlemen of the Negative certainly stand. They claim that the Peace Pact of 1815, the so-called Holy Alliance, was an exact analogy with the situation of the Kellogg Peace Pact, but, Ladies and Gentlemen, remember that the third speaker for the Negative said this Peace Pact had to do with three nations. Aye, there's the rub.

Lincoln once said, "United we stand, divided we fall." That is the situation to-day. The whole world must get together on this or else it will fall. And we will admit it. We must not be like the proud mother witnessing the departure of the boys for the fields in France who said, "Oh, look, Papa, see, our Johnny he is in step and all the other boys are out of step." That situation will not make for the success of this Pact. They have asked the question, what of it, what if it is an American made product? That question is answered when we consider that the movement for recodification of international law has developed mostly in this country, and it is from this country that the movement must take form, must be developed, must be extended to all war problems, and must ultimately result in the creation of a new order, the Kellogg Peace Pact being the preamble to the new law.

THIRD NEGATIVE REBUTTAL

Fred Webber, Iowa

Ladies and Gentlemen: The Affirmative have done a few things this evening. For one thing they have cited au-

thorities. We talked about that a little while ago and they still insist that all they are required to do is cite authorities. We don't object to these authorities believing as they do, but we believe there is little value in a thing of this kind unless we are going to examine the question on its merits and not on what other folks believe about it. It is all right for our opinions to be seasoned by the opinions of others, but it is very poor pedagogy to form our opinions by the opinions of others. Let us examine the thing as it is and come to some conclusion. That is what the Negative have tried to do this evening.

Secondly, the Affirmative have said there are always objections to forward moves, and the obvious inference is that that removes the objection. We don't believe that does remove the objection. The fact that this thing has no more opposition than the United States Constitution does not mean this is good. We believe it isn't good for the reasons we have pointed out.

The third thing the Affirmative have done has been to take the Kellogg Peace Pact at its face value. As we have said several times during the course of the discussion, if we take the Kellogg Peace Pact at its face value it is a great thing, and we would be in favor of it, but we can't take it at its face value. That is the trouble. Here's the situation: European nations have said, "Yes, we renounce all wars except wars of self defense, wars under the League of Nations, wars under the Locarno Pact, and under the Treaties of Alliance, and wars under treaties of special interest wherever they may be located." You have to take those things into consideration as well as the two articles of the Pact itself. You have to take the situation as it exists and not as the gentlemen of the Affirmative would like to have it exist.

On the contrary, the Negative have pointed out some very fundamental things about the Treaty: first, that the exceptions to the Treaty rob it of its value. We have asked the gentlemen of the opposition to point out any likely threat of war in the present international situation that would not be covered by the exceptions to the treaty, and this they have failed to do. If every likely war is covered by an exception rather than by the treaty itself, then what value

has the treaty? We believe that the exceptions are just as important as the treaty itself, and since they cover all the wars that are likely to arise, we believe it should not be adopted. Furthermore, we have pointed out the danger of becoming involved in the affairs of Europe and we have pointed out why we believe that is objectionable. We have shown that we are legally and morally and by public opinion obligated to assist in the solution of European problems, and we have shown that solution is based upon the old idea of balance of power, and that isn't a movement for peace.

In conclusion, I should like to say that the Negative have in mind a clear picture of the effect of the Kellogg Peace Treaty as being something like this: all nations lining up in a circle, each one with one hand on the nation ahead, and the other holding a stone, and they are all singing a song, "We won't throw the first stone, but God pity the nation that does."

THIRD AFFIRMATIVE REBUTTAL

Walter Graunke, Wisconsin

FRIENDS: Let's briefly run through the case for the Pact as the Affirmative have presented it to you this evening. Our first speaker clearly demonstrated that this Pact was an unmodified American product and was a logical culmination of our foreign policy. The second speaker for the Affirmative showed us that the ratification of this Pact would make the peaceful adjustment of international difficulties the law of nations, and in closing he endeavored to show you that this Pact represents the world hope for peace because it seeks to outlaw war—something which has heretofore never been done since the dawn of history. I endeavored to show you that the Pact would strengthen the peace party in every nation. I endeavored to show you that it represents the ultimate ideal toward which humanity and efficiency and all nations must move, and the opposition admitted it was a worthy ideal. It did represent the right spirit, but they were opposed to it because there were reservations to it.

There has been much quibbling as to authority this evening. When we presented statesmen they, in so many words, told us these men were visionary, idealists, politicians, etc. I am going to read you what the leading generals of the world have to say about the Kellogg Peace Pact. Here's what Marshall Foch, leader of the allied forces, had to say about the Pact: "War is the greatest crime in the world and must be outlawed by solemn declaration of all nations such as provided by the Kellogg Peace Pact." Here's what Germany's greatest military authority, von Seeckt, said of the Pact, "I believe that if the Kellogg Pact is ratified no one can expect to see an offensive war or a war of conquest." And here's what General Peyton C. March, Chief of Staff of the United States Army, said about the Pact: "In the midst of the confusion and gropings for a solution of this complex war problem, a ray of light has come in the form of the Kellogg Peace Pact renouncing war as an instrument of national policy." Grant that treaties may be scraps of paper when a great emergency comes, just the same the Kellogg Peace Pact is a great move toward peace, a peace longed for by all men. And here's what General Pershing says about the Kellogg Peace Pact: "The responsibility which rests upon the enlightened governments to renounce war as a policy is too great to be neglected," and Ladies and Gentlemen, I am sure you will agree with me these men are not parlor pacifists or rocking chair anarchists.

The opposition says, "The Pact is all right but you haven't got down to the bottom of this thing; you haven't dislodged the African from the wood pile." That is the only thing they have against the Pact, the reservations which they claim are attached to it. Now, Ladies and Gentlemen, let's settle this subject of reservations once and for all. I am going to quote the greatest authority on the subject, Secretary of State Kellogg. Here's what he said in his Armistice Day speech delivered at New York, November 11, 1928, about the cry of reservations and exceptions: "There are no collateral reservations or amendments to the treaty as finally agreed upon. There is nothing in any of my notes of my speeches sent to the signatory powers during our negotiations which is inconsistent with or changes the

meaning of the treaty as finally signed. Finally the countries were satisfied that no modification of the treaty was necessary to meet their views." Get this, Ladies and Gentlemen, finally the countries were satisfied that no modification of the treaty was necessary to meet their views. Here we have the statement of Secretary of State Kellogg saying there are no reservations or exceptions to the treaty. We have the statement of the opposition saying that there are. Take your choice.

President Coolidge, in his Message to Congress, aptly summed up what the Kellogg Peace Pact should mean to the world when he said: "The Paris Peace Pact is the most solemn declaration against war, the most positive adherence to peace that it is possible for the sovereign nations of the world to make at this time." I thank you.

Dr. Hunt: As critic judge of this debate we have with us Professor Alan H. Monroe, of Purdue University—is Professor Monroe ready to render his judgment? I was told that we might have to wait a few moments for him to come to the decision that is so interesting to us. When Professor Weaver asked me to preside at this meeting tonight, he told me all I had to do was to sit up here and look pleasant. I was told by one of Professor Weaver's colleagues, Professor Ewbank, that I might have to make a speech to fill in the gap, to entertain you while the judge was making up his mind. The judge's mind is made up, I am happy.

PROFESSOR MONROE

Ladies and Gentlemen: I feel that I am somewhat at a disadvantage this evening, not having either the weight nor the wit of the gentlemen who have preceded me on this platform. I think I can perhaps make up for both of those lacks by another quality, and that quality is brevity. The debate this evening has been a very interesting one for this reason. We have had here a conflict not only of logic and evidence, but a conflict in persuasion. Both teams, it has seemed to me, have been objective in their speaking; they

have talked to you as an audience, and I am interested to note that I think it is an interesting development in debating and one which ought to be encouraged. However, the persuasive effect of the two teams seemed to me approximately to balance, and therefore it seems to me that the debate was left for its decision upon the argument that was presented by the winning side, both in construction and through the rebuttal, and that argument, as the two final speakers summed it up, I thought settled itself approximately into this:

First of all, shall we take the statement of authorities who are in favor of a Pact in its general statement, or shall we consider the specific applications of the Pact to the situation as it exists, even though there may be fewer authorities in connection with those specific applications. That seemed to be one issue that was raised and upon which I am supposed to decide, this evening. The second final criterion upon which the argument hinged was whether or not we should consider the statement of the Pact as it is written or whether in that Peace Pact should be understood also the interpretations that have been placed upon it by European diplomats, such as Chamberlain and Briand. Now in my opinion, and you will have to take it as my opinion—that is my business—to the first of those questions as to whether or not authority in general or the specific situation with perhaps even fewer authorities should be taken as proof and as argument, I am forced to reply in favor of the Negative. The Affirmative, it seems to me, has always been held to carry the burden of proof in a debate upon a question of policy, and that therefore they must not only cite a number of authorities in favor of the general proposal, but must answer the objections which are raised by the Negative. Particularly is this the case when there is such an objection as the principal one raised by the Negative this evening, namely, will the Pact do any good? Will it work? Now, it seems to me that on that point the Negative, in their discussion of defensive war, create a futile object out of the Kellogg Peace Pact, and cite, as a matter of fact, Secretary Kellogg himself, who seemed to be the Affirmative's chief authority this evening, to show that defensive warfare was not removed by this

Pact. The gentlemen of the Negative showed that practically every war in the past has been called a defensive war, and asked the Affirmative to show you what nation in the great war wasn't fighting a defensive war. The Affirmative failed to do this, so that on this basis, I am forced to decide in favor of the Negative.

As to whether or not the Pact shall be considered as the statement of the Pact, or included in that ought to be the interpretations of it, you can already guess my answer. I hold that interpretations which are made upon it must be considered in connection with the statement of the Pact for the simple reason—remember I must not make my own decision, but on the basis of the argument—that it seems to me on the basis of the argument presented here this evening, the Negative demonstrated that these interpretations must be considered. In that I want to bring up one point: the last statement of the Affirmative from Secretary Kellogg. And I want to read the exact statement of it so you will see I am not listening with one ear closed. Mr. Kellogg said, "This is not inconsistent with the meaning of the Treaty," and this meaning is what the Negative had quoted Kellogg already as saying, that defensive warfare was to be allowed.

On that basis it seems to me necessary, even though I certainly am sorry to disappoint the Wisconsin audience here, to give the decision in this particular debate to Iowa.

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CHAPTER II

BRITISH CRIMINAL PROCEDURE

EARLHAM COLLEGE

versus

WABASH COLLEGE

RESOLVED: *That a criminal code similar in procedure to the criminal code of Great Britain, should be adopted throughout the United States.* (*Constitutionality waived.*)

This is a stenographic report of a debate between the Earlham College Affirmative team and the Wabash College Negative team, held at Richmond, Indiana, March 2, 1929. The Presiding Officer was Mr. Paul J. Lichtenfels of Richmond; the Critic Judge was Professor L. R. Norvelle, of Indiana University; the Official Reporter was John F. Holaday, of Richmond. The Critic Judge gave his decision in favor of the Affirmative, explaining that his reasons were "technical" rather than otherwise, in that he believed that the British procedure and the American federal procedure were similar. The report of this debate was secured through the courtesy of Professor W. N. Brigance, Head of the Department of Speech in Wabash College. The bibliography was prepared by Professor Myron G. Phillips, Debate Coach in Wabash College, assisted by members of the Wabash College debate teams.

BRIEF

BRITISH CRIMINAL PROCEDURE

AFFIRMATIVE

INTRODUCTION:

A. The amount of crime in the United States, compared with that in other countries, is appalling.
   1. In 1923, there were some ten thousand murders in the United States, compared to two hundred sixty-two in all of England, Scotland and Wales.
   2. In the same year, there were forty-two murders in London compared with some two hundred sixty-two in New York City alone.

B. There is a rising tide of sentiment for reform in our criminal procedure.

C. While our procedure is not the only cause of the existing situation, certain corrections in it will put us in a much more formidable position with regard to the criminal.
   1. It is recommended by such men as Taft and Pound, and members of the American Bar Association.
   2. Throughout these recommendations, the British criminal procedure is held up as a pattern for our reforms.
      a. This is only natural.
         (1) Our procedure was patterned after that of Great Britain when we made up our codes in the beginning.

D. There are some terms in the statement of the question that need clarification.
   1. "*Criminal procedure* is the method pointed out by law for the apprehension, trial or prosecution, and fixing the punishment, of those persons who have

broken or violated, or are supposed to have broken or violated, the laws." (*Black's Law Dictionary,* 2d Ed.)

2. By *code* the Affirmative mean the group of laws that govern the body of criminal procedure, as that term is properly understood.
3. By *throughout the United States,* the Affirmative indicate their concern with reform in the several states, and not with the federal government or its courts.
4. By *similar,* the Affirmative mean identity in general principle, with alterations in detail to meet the exigencies peculiar to the United States.

E. A brief survey of the situation shows us that there are several things in our American procedure which contribute to the escape of the guilty.
   1. Technicalities in the indictment.
   2. Judges with limited powers.
   3. The advantage the defense has over the prosecution.
      a. The prosecution must outline its case, naming its witnesses.
   4. The judge cannot point out to the jury that the defendant has failed to testify.
   5. Many pleas of insanity are entered in murder trials.
   6. The poor and the rich cannot share alike under our appeal system.

I. There are certain processes in the British procedure that are superior to our own and should be incorporated in our state procedures.

A. The arrest, warrant and arraignment are similar to our own procedure and there is no need for change.

B. The indictment by the grand jury still retained by twenty-one states, is used also by Great Britain.

C. The English plan should be adopted, in insanity pleas, of convicting a man as guilty but insane.

D. The short indictment should be adopted from the British system.

1. It gives merely the man's name and the crime for which he is arraigned.

E. The judge should have power to question witnesses and to sum up the case as he sees fit.

F. There should be a pre-trial selection of the jury by the attorneys for the defense and the prosecution.
   1. This would save much time in the court room.

G. The judge should have the power to point out that the accused has failed to testify for himself.
   1. The fact that he did not do so would not be enough to convict him.

H. The appeal system of the British should be adopted.
   1. The appeal must be made within ten days after the trial.
   2. The appellate court has the power to judge on points of fact as well as of law.

II. The result of the adoption of these processes into our code of criminal procedure will be beneficial.

A. It will result in celerity.
   1. In our country, delays in the court room are the common thing.
      a. On the other hand, England is noted for its speed and its efficiency in dealing with questions of law.
   2. The criminal in this country courts this delay in process of law.
      a. He knows it is his best ally.
         (1) In this time, it is possible to buy off the most important state witnesses.
         (2) Some of them can escape.
         (3) Public opinion can be brought around to favor and aid him.
   3. The situation in regard to delays would not be remedied by having more judges.
      a. We already have more judges than England has today.
   4. Too much time is lost in impanelling a jury.
      a. The English system is much more rapid.

B. It will result in certainty of justice being carried out.
   1. Only two or three out of every hundred felonies in this country ever result in convictions.
      a. In Canada, where the system is similar to that of Great Britain, the proportion is four or five out of every hundred.
   2. In our country the judge has only the power of an interested spectator and a time-keeper.
      a. In England, the counsel for the prosecution and the defense occupy positions less prominent, and the judge directs the activity of the court.

C. It will result in finality.
   1. The lack of finality in our procedure was shown strikingly in the Sacco-Vanzetti case.
      a. Our code of procedure was utterly inadequate to handle this case.
   2. The insanity plea has become prominent in our court fiction today.
      a. The Remus case is an illustration in point.
         (1) Today Remus is at large, altho a murderer and a criminal.
         (2) Under the procedure of Great Britain he would have been judged "guilty but insane."
            (a) He would have served his sentence after being released from the hospital for the insane.

III. The British system of criminal procedure will be successful if adopted in the United States.

A. It is already being used, in part, in our federal courts.

B. A number of states have already adopted parts of it.
   1. Massachusetts is using the simple indictment.
   2. California does not permit a reversal of a decision on a mere technicality.
   3. Other states, such as Michigan and Missouri, have also adopted parts of the British code.

C. There is already an ever-spreading tendency toward enlightened procedural reform.

1. William Howard Taft, Chief Justice of the United States Supreme Court, has commented favorably on the British plan.

D. In such cities as Detroit and Cleveland, where features of the British code have already been adopted, justice has been speeded up.

IV. The following steps, if taken, would give us a system similar to that of Great Britain:

A. Bail should not be given to people with criminal records.

B. Trials should be speeded up so that the innocent may not languish in prison nor the guilty menace society.

C. The indictment should be simplified, to make technicalities impossible.
   1. This has already been done in Massachusetts, California, Louisiana, Michigan and Missouri.
   2. Cases in Texas, Illinois, Ohio and other states show the need for it.

D. The judge should be given more power, as is done in the federal court system.

E. The jury should be selected prior to the trial.
   1. This would save time and money.

F. The number of appeals should be limited to one and no case reversed on a mere technicality.
   1. Some states have already accepted this.

G. Both the state and defendant may appeal, provided the defendant was not acquitted at the first trial.

H. The court of appeals should have power to decide on points of fact as well as of law.

Negative

Introduction:

A. The Affirmative hold the burden of proof on this question.
   1. They are asking for a change in our present code of procedure.

B. There are a number of questions they must answer to show just why we should change.

1. What is wrong with our present code of criminal procedure?
2. Are the faults serious enough to warrant the remedy the Affirmative suggest?
   a. Is the British procedure the only one that will cure our ills at the present time?
3. Will the British code of procedure work satisfactorily in this country?
   a. Is it working satisfactorily in Great Britain?
4. What assurance have we that it will not introduce new and greater evils?

C. To define the question, it is necessary to consider its psychology as it was worked up last year from the simple form "Resolved, That the British criminal code be adopted in the United States."

1. It was decided that the entire criminal code was too vast to undertake.
   a. The whole of it could not be dealt with, so the words "criminal procedure" were inserted as a part of the code.
2. It was decided that there would perhaps have to be changes in the code.
   a. So the word "similar" was adopted.
   b. By this it was inferred that we would transfer an entire system and not just parts.
3. It was decided to make its application comprehensive, i. e., apply in all the states.
   a. So the word "throughout" replaced the word "in."
      (1) The Affirmative have interpreted "throughout" to mean "part of."
         (a) They have failed to include federal procedure, but have limited the question to state procedures.

I. It does not necessarily follow that because we have a large crime rate, the adoption of British procedure is the remedy for it.

A. If the procedure is at fault we should study the procedures of other countries besides Great Britain.

1. Such countries as Holland, Denmark, Norway, Sweden, have a crime rate one-fourth that of Great Britain.

B. While procedure is partly to blame for our high crime rate, there is another remedy than the one suggested.

II. It is not true, as the Affirmative say, that the British criminal procedure and our federal procedure are similar.

A. Bills of particular.
1. These are optional in the British system, in ours they are not.

B. Time allowed for appeal.
1. The time is not so limited in the federal system.

C. Power of the judge.
1. In British procedure, the judge is almost tyrannical.
a. He has the right to comment on the failure of a person to testify in his own behalf.
(1) It amounts to the same as forcing him to do it.
2. The federal judge, while he is strong in power, cannot go so far as this.

D. Technicalities in the indictment.
1. In British procedure they constitute ground for appeal.
2. In the federal procedure they do not.

E. Selecting the juries.
1. English lawyers can interrogate the juries.
a. In some cases they can have thirty-five peremptory challanges.
2. American lawyers for the defense and prosecution have only ten peremptory challenges.

F. In the United States, the judge directs all the examinations.

III. It is necessary to distinguish in the United States between our state criminal procedure, as it exists in the several states, and our federal procedure.

A. The Affirmative have failed to prove that a large part of our criminal procedure is inefficient.

1. They have omitted federal procedure altogether, but have limited the question to state codes.

B. Our federal code is older than that of Great Britain by fifty years.
   1. The procedure of Great Britain was even patterned after that of the United States.

C. Our federal code has been revised from time to time.
   1. The latest revision was in 1925.

IV. The defects of our present state codes of criminal procedure can better be remedied by the extension of our federal code than by adopting the British code.

A. It will remedy the defects due to technicalities in the indictment.
   1. The federal indictment is much shorter and less technical than state indictments.
   2. It cannot be affected by "any matter of imperfection in the form only."

B. It will speed up the selection of the jury and the trial.
   1. The trial of Governor McCray in which it took ten days to pick a jury in Indiana, and three weeks to result in a disagreement of the jury, was disposed of in three days in the federal court.
      a. Two days later he began to serve his sentence in the Federal Prison.
   2. The auto ring conspiracy cases in Indianapolis were settled in four days by the District Court.

C. It is not desirable that a judge should be able to comment on the failure of the defendant to testify.
   1. He might put the defendant at a serious disadvantage, as compared with the opposing counsel.

D. The quick conviction of every supposed criminal might be a serious disadvantage to the innocent man.
   1. This might have been the case with the Sacco-Vanzetti trial, where at least one man has since been found not guilty.

E. The insanity plea is not an evil.
   1. The Remus case was an exception.

2. An insane person cannot be punished for the crime he commits when he does not realize the consequences of his acts.

F. The British system of procedure is a ruthless thing.
   1. It assumes every man brought before the court is guilty.
   2. Under our American procedure, "a man is innocent until he is proven guilty."

G. Our federal code is superior to the British in respect to the powers of the judge.
   1. He has right to sum up both sides, interpret the law, and instruct the jury whether, in his opinion, the accused is innocent or guilty.
   2. He can correct any error or mistake in the indictment.

BRITISH CRIMINAL PROCEDURE

EARLHAM COLLEGE

versus

WABASH COLLEGE

CHAIRMAN

Paul J. Lichtenfels

This debate is one of a series conducted under the auspices of the Indiana Collegiate Debating League. The majority of the debates were held last evening.

The question, as you see from your program, is, "Resolved, That a criminal code similar in procedure to the criminal code of Great Britain should be adopted throughout the United States. Constitutionality waived."

The Affirmative of this question will be taken by Earlham, and the Negative by Wabash.

The first speaker for the Affirmative will be Mr. Robert S. Miser, of Earlham.

FIRST AFFIRMATIVE

Robert S. Miser, Earlham

MR. CHAIRMAN, HONORABLE JUDGE, WORTHY OPPONENTS, LADIES AND GENTLEMEN: The question for debate this evening is, "Resolved, That a criminal code similar in procedure to the criminal code of Great Britain should be adopted throughout the United States."

When one glances at the pages of statistics showing the amount of crime in the United States compared with the amount in other countries, one is at once appalled by the larger percent in the United States. When we realize that in 1923 there were some ten thousand murders in the United States, compared with some two hundred and sixty-two in all of England, Scotland

and Wales; when we realize that in the same years there were forty-two murders in London, compared with some two hundred and sixty-two in New York City alone; we realize that there is something wrong with the American criminal situation.

During the past few years a tide of sentiment for reform in our criminal procedure has been rising. This tide of sentiment is too strong longer to be confined by mere thinking. It is the opinion of many prominent men connected with criminal procedure that it needs reform.

The Affirmative does not believe nor contend that mere change in criminal procedure will rectify our present criminal situation. It may be contended that poor home conditions, bad economic conditions, the ease with which firearms are acquired in the United States, all are contributing factors. The Affirmative in this debate this evening admit these matters, but we also contend that there are certain things in our American procedure which, if corrected, will put us in a much more formidable position with regard to the criminal.

The recommendation of such men as Taft and Pound, and the members of the American Bar Association, cannot be ignored. Throughout the recommendations for reform there is continually found mention of the British procedure as a pattern for our reform. It is only natural that we should pattern our reform after Great Britain. When we made up our codes of procedure we made them up after the pattern of Great Britain, and along with the good parts of that procedure came technicalities which had arisen to protect the poor English peasants from excessive punishments if they were found guilty. So, with that history, we would expect, naturally, that our reform would follow Great Britain's procedure.

Before proceeding further with the question, there are some terms in the statement which will need clarification.

In Black's *Law Dictionary*, Second Edition, we find that criminal procedure "is the method pointed out by law for the apprehension, trial, or prosecution, and fixing the punishment, of those persons who have broken or violated, or are supposed to have broken or violated, the laws."

And again, from William Draper Lewis, in the *Annals of the American Academy* for 1926, we find that the legal profession is largely responsible for what we know as criminal procedure, that is, the law, and court rules which regulate the arrest,

indictment and trial of accused persons, and the appeals from conviction in criminal cases.

By "code" the Affirmative mean a group of laws whose provisions, regarded as a whole, will govern the body of the criminal procedure as that term is properly understood.

By "throughout the United States," the Affirmative indicate that we are concerned with reform among the several states, and are not at all concerned with the federal government or its courts.

By "similar," the Affirmative mean identity in general principle, with alterations in detail to meet the exigencies peculiar to the United States.

A brief and most perfunctory survey of the American situation shows us that there are several things in our American procedure which are contributing to the escape of men of a surety guilty.

The first of these things is, technicalities in the indictment. We find that, in Wisconsin, in the case of *Williams vs. State,* that Williams' case was reversed because in the indictment was written "against the peace and dignity of state," instead of "against the peace and dignity of the state."

We find in American procedure a judge with very limited power; a judge who does not have the power to question witnesses himself, or to sum up the case, as he might do under British procedure.

We find that the prosecution must outline its case, naming the witnesses whom it wants to bring before the court, thus giving the defense a great advantage over the prosecution.

We find that the judge is unable, in his summing up of the case, to point out to the jury the fact that the defendant has failed to testify in the trial.

We find that many pleas of insanity are entered in murder cases.

We find in American procedure an appeal system in which the state and the poor man cannot share alike with the rich defendant.

To proceed with those steps of British procedure, namely, the indictment, the warrant, arraignment, pleas, bail, selection of the jury, opening speeches, examination of witnesses, closing pleas, judge's charge to the jury, verdict, sentence and appeal, we find that those steps are quite similar to those within our own procedure. But, we also find that there are certain pro-

cesses in these steps which the Affirmative feel are better than the processes within our own. It will be the task of the first speaker to show what parts of the British procedure we wish to incorporate within our own system. It will be the task of the second speaker to show that the three great essentials of law enforcement, namely, celerity, certainty and finality, which are the fundamental principles of the English procedure and which warrant its adoption into our code of procedure, are lacking in our own. It will be the task of the third speaker to show that the British system will be successful if adopted in the United States.

Now, to proceed with those things which we wish to adopt from English procedure.

We find that the arrest, warrant and arraignment are similar to steps within our own procedure, and need no mention for change.

It is contended by some that the grand jury indictment is an antiquated institution and needs reform; but the Affirmative believe, because twenty-one of the states still maintain this form of indictment, and Great Britain uses this form of indictment, that there may be still some good in it.

The Affirmative would work along the English plan in insanity pleas, that is, of convicting a man as guilty but insane.

The short, compact indictment is another thing of British procedure which we would introduce, an indictment that gives the name of the man and the crime of which he is accused, and which gives no loop-holes for technicalities.

We wish to give the judge more power,—power to question witnesses in the case, and power to sum up the case as he sees fit.

We would advocate a pre-trial selection of the jury by the attorney for the defense and the attorney for the prosecution. This would cut down much time in the trial and would save time in the court room.

We would advocate the power of the judge to point out in his summary of the evidence, that the accused has failed to testify for himself. The fact that the accused failed to do so would not be enough to convict him, but the jury would consider that in their voting on the case.

We would advocate an appeal system similar to the British, in which the appeal must be made within ten days after the

trial, and where the appellate court has the power to judge on points of fact as well as on points of law.

Thus we see that there are some parts of the English system which may well be adopted into our own, namely, more power to the judge, better methods of selecting juries, a simplified indictment, a change of the insanity plea, and a general removal of the causes of so many men who are arrested escaping punishment.

It will be the task of the next speaker for the Affirmative to show that these proposals will bring celerity, certainty and finality to our system, and that they will, if adopted, be successful in the United States.

I thank you.

Mr. Lichtenfels: The opening constructive speech for the Negative will be given by Mr. Edwin W. Schoenberger, of Wabash.

FIRST NEGATIVE

Edwin W. Schoenberger, Wabash

Mr. Chairman, Ladies and Gentlemen: Before I open the case for the Negative, I wish to say that we are delighted to be here this evening to debate Earlham. Personally, this is my third debate with Earlham College, and I know I have enjoyed all of them, and, while I shall not return next year, yet I know there are men here on the platform who will return, and be happy to continue forensic relations with Earlham College.

We are further delighted at being here this evening because we received word yesterday from the National President of Tau Kappa Alpha, honorary forensic fraternity, that we would have the privilege of installing a chapter of Tau Kappa Alpha in Earlham College. We are proud of this, because Wabash was one of the schools that was anxious to see Earlham have a chapter of Tau Kappa Alpha. For these reasons, I am very delighted to be here this evening.

Now let us turn to the question we have at debate.

The first speaker gained your attention by a survey of the crime rates of the United States and Great Britain, and inferred from those that we needed the English procedure because of the high crime rate of the United States as compared with

that of Great Britain. If we could only touch the surface of this question and go no deeper, perhaps that would be enough. But you realize that the Affirmative on this question hold the burden of proof. By that I mean they are asking for a change. They want us to throw out the criminal procedure we have at the present and bring in a foreign one, one from Great Britain. Because of that, we feel they must give good and sufficient reason for throwing out our own American procedure and bringing in one from Great Britain. There are a number of questions that are inherent in this topic we have for debate, questions that must be answered by the Affirmative in order to show just why we should throw out our own procedure and bring in some other.

It seems to me one of the most important questions is, first, what is wrong with our own criminal procedure? Just what are the faults we have at the present time that we are concerned about? Do we have at the present time serious evils directly traceable to these faults in criminal procedure? Are these faults serious enough and important enough to become alarmed about?

In the second place, are these faults in our criminal procedure, which no doubt the gentlemen will continue to point out in the debate, important enough that we have to go to Great Britain to get them remedied? Can we find any remedy at home at the present time? In other words, *is the British procedure the one and only procedure out of all of those that we have available as a solution to our ills at the present time?*

But let us turn still further and we find more questions with which we are concerned, about this British procedure. We should like to take into consideration how it will work in this country. Is England entirely satisfied with the British procedure? Is it working satisfactorily in Great Britain? Have we any assurance that after we bring this British procedure to this country, it will work just as efficiently here as it has in England?

Furthermore, what assurance have we that it will not introduce new and greater evils? In other words, My Friends, after we have brought this British procedure over here that the gentlemen are proposing, how do we know that, in the end, we will not be just as badly off as we are at the present time?

Now, going further in analysis of this question, and in the terms that the gentlemen have defined so far, let us consider

the definitions they have given us. I think one of the best ways of finding out just what the various words mean is to consider the phraseology of this question as it was worked up from the most simple form, from the men who formed it in Indianapolis last year. The question that was first considered for debate was a very simple one: "Resolved, That the British criminal code be adopted in the United States." It was very simple and being simple made it complex. Somebody brought up the objection that the criminal code was too vast; we could not deal with the entire code; there must be some phases that we were especially interested in. So it was decided that procedure was the interesting thing, the thing we wanted to get at, so the words "criminal procedure" were inserted as a part of the criminal code. Following this, somebody raised the question that perhaps there would have to be changes of the code, so the word "similar" was adopted. By similar they meant only those necessary changes of bringing the code from Great Britain to the United States. In other words, it was inferred that we would bring an entire code and system, not just parts; not a good part from there and a good part from some other part of the code, but we would bring the entire code and adjust it to the United States, with only the necessary adjustments to our geographical conditions.

The most interesting word we are concerned with is that little word "throughout" the United States. I will ask you to turn to the preceding gentleman's discussion. He said they include by "throughout the United States," only *state* procedures, and that they ignore the question of federal procedure. Now, I ask them why they ignore the *federal* procedure? The word "in" was first used in this question, and one of the framers of the question suggested that they wanted to include everything, and perhaps "in" would not. If we just had the word "in" in the question, then if we brought British procedure over and adapted it to Richmond, it would be "in" the United States; but they wanted this comprehensive; they wanted to take in the entire country; so they put the word "throughout." The gentlemen of the Affirmative, so far, have interpreted it to mean "part of," instead of "throughout." I am sure they really mean we will take the entire number of procedures we have at the present time. Why are we considering all these different procedures? Merely this, at the present time we have a unique

arrangement of criminal procedure in the United States. We have a *state* procedure and the *federal* procedure. The states are separate from the federal government, so all the state procedures may be grouped together in one class. We will call these collectively the state procedures. But above these we have the federal procedure, which we consider is included in this question by the word "throughout." Again I ask the gentlemen why they have failed to include the federal procedure when the question states "throughout" the United States.

Now, let us turn to their first speaker.

He has shown us the large crime rate in the United States as compared to that of Great Britain. From that has come the conclusion, because of our enormous crime rate, because of the small crime rate in Great Britain, that we should do well to study British procedure and bring it to this country. Now, if we are considering crime rates and procedures, it seems to me we would do well to study other countries, if the entire fault of the situation lies in procedure. We find that Holland, Denmark, Norway, Sweden—those small countries have a crime rate one-fourth that of Great Britain. If we are interested in crime rates as connected with procedure, why not turn to those small countries and bring our procedure from there rather than Great Britain. It seems to me the gentlemen have followed this line of reasoning: In Great Britain we have a small crime rate; in the United States we have a large crime rate; in Great Britain we have one type of procedure; and in the United States we have another; therefore, the solution to decrease our criminal rate comes through procedure. If that is the solution, then why not turn to these other countries that I have mentioned as a solution to our problem?

We admit the conditions as to crime which they have so far pointed out. They said we might bring out these other contributing factors, social and economic conditions, and all of that. We admit that. We admit that procedure shares a part in all this. But we feel that there is another solution to this, rather than going to a foreign country and bringing a procedure from Great Britain. *Rather, we should have another plan; one that is at home; one that we feel can be adopted at the present time with much less perplexity, with much less trouble, than bringing one over from Great Britain.*

MR. LICHTENFELS: The second speaker for the Affirmative will be Mr. H. George Peacock, of Earlham.

SECOND AFFIRMATIVE

H. George Peacock, Earlham

MR. CHAIRMAN, HONORABLE JUDGE, WORTHY OPPONENTS, LADIES AND GENTLEMEN: The first negative speaker opened his debate by asking a number of questions of the Affirmative. Those questions will be answered by the Affirmative during the course of the debate.

Then he asked the question, Why ignore the federal system in this debate this evening? Why not bring it in, because, as the question is stated, we said that we must adopt this code throughout the United States; therefore, we must of necessity consider the federal code.

Ladies and Gentlemen, we felt that it was unnecessary to consider the federal code because it today is similar to the code of Great Britain, and therefore it is not necessary to adopt that code. We already have it.

The affirmative stand in this debate was made clear to you by the first affirmative speaker, who pointed out the deplorable condition existing in our crime situation in this country today. He told you of the need of our procedural reform, and pointed out the steps in our procedure which he felt ought to be modified, and also pointed out those steps from the English system which we should adopt in this country. As second affirmative speaker, it becomes my duty to make a comparison between the American system on the one hand and the English system on the other; to show the weaknesses inherent in our system and to show the strong points of the English system.

If my debate were to be summed up in a single statement, it might be this: that our code today lacks the three fundamental essentials of law enforcement, namely, celerity, certainty and finality, all of which are present in the English code of procedure, and all of which we adopt should we adopt the English code of procedure in the United States today.

Our nation is one in which delays in the court room are the common thing. England, on the other hand, is one which is

known for its speed and its efficiency in dealing with questions of law. In this country we have become so accustomed to hearing of a trial coming up for retrial months and sometimes even years after it was first tried, that the public today is not even aroused upon such questions as that. When we hear of it we simply pass it up as a matter of slight importance; but this is not the case in Great Britain. Furthermore, in this country the criminal knows the importance of this delay in law. He knows that it is his best ally, and he simply courts it. He knows that during this time it is possible for the most important witnesses for the state to be bought off. He knows that it is possible for some of the witnesses to escape. He knows that it is possible for public opinion to form in his favor and for sympathy to come to his aid. For these reasons it has become quite expedient that we eliminate this deficiency in our present code.

They may say in the course of this debate and it is often contended, that the thing we need is more judges, and then we will have a remedy to our situation. But, Ladies and Gentlemen, if we were to adopt the ratio of courts in England that our own Massachusetts has today, England would have about five hundred and seventy higher court judges. This is twenty times as many judges as they have at the present time, or a total of 1666, in comparison with the present number of eighty-three judges throughout the country of England.

Then, another case in which we lose a great deal of time in this country is in impanelling a jury. Ninety-one days were consumed in impanelling the jury to try Calhoun in San-Francisco, and to try one Shay in this country we summoned 9425 jurors, of whom 4821 were examined. The cost of this jury service alone to our government was $13,000. In England, for one of the most notorious cases of all time, that of Doctor Crippen, the jury was seated eight minutes, and only three jurors were challenged.

The second point which I should like to bring to your attention this evening is that our courts lack certainty. Only two or three out of every hundred felonies ever result in convictions in this country today. But, in our neighboring country of Canada, we find that there, where they have a system similar to that of Great Britain today, four out of five indictments result in convictions. Certainly then, this code of which we are

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speaking tonight does have the element of certainty, which is the second great essential in law enforcement.

Furthermore, we might compare the typical scene in the English and the American court room. It shows some of the essential differences that come up in the codes of procedure. In our code, in the United States, the counsel for the defense and the counsel for the prosecution are provided with tables much as the Affirmative and Negative have been provided in this debate this evening. Then, seated in a very imposing position before them, is the judge, but, Ladies and Gentlemen, in our country the judge has only the power of an interested spectator and a time-keeper. In England, we find the counsel for the defense and the prosecution sitting in semi-circular pews, and when the time comes for them to examine a witness, they simply rise from where they are seated and carry on their discussion from that point. The case goes forward with rapidity, and the judge directs the activity of that court. For those reasons, certainty is assured in the courts of England.

Then, the third thing which we contend is lacking in our system today is finality. Finality was shown to be strikingly lacking in the case of Sacco and Vanzetti. Today we know that one of those men who was convicted and who went to his death a short time ago, was actually innocent of one of the crimes of which he was convicted. Yet, Ladies and Gentlemen, that case stands out before us tonight as one which shows the utter inadequacy of the present code of procedure which we have and which we are trying to use throughout our United States at the present time. It shows, furthermore, that we lack these essentials of celerity, certainty and finality. This is one of the things that we are trying to do away with, and we of the Affirmative are only asking you to accept that code which most nearly meets the conditions which our country finds to be necessary.

Then, another reason why finality seems to be greatly lacking in our country is that the insanity plea becomes so prominent in our legal fiction today. A recent case known to most of us in this audience tonight, that of Remus, in Cincinnati, brings this point clearly to our attention. Remus was tried in that court and he was convicted of criminal insanity, and the trial was for murder. But, after the trial was over, he was simply confined in the insane hospital. A short time after he had

been taken to that hospital, he was declared to be a well and normal man. Today this man is at large in the United States, a murderer and a criminal, just as much as any other criminal in the country. Contrast this with what would have happened had we had the criminal procedure of Great Britain in this country. In that case the verdict would simply have been "guilty but insane," and when his time had elapsed at the insane hospital and when they declared that he was a well man, it would have simply meant that at that time the sentence which was passed by the court at the time of his trial would have begun, and he would have been confined in the proper penal institution to serve that sentence which a murderer should serve.

These reasons, Ladies and Gentlemen, of celerity, certainty and finality, make it necessary for us to adopt the criminal code of Great Britain in the United States. I thank you.

MR. LICHTENFELS: The case for the Negative will be continued by Mr. Byron K. Trippet, of Wabash.

SECOND NEGATIVE

Byron K. Trippet, Wabash

MR. CHAIRMAN, LADIES AND GENTLEMEN: The gentleman who just preceded me began his case by saying that the Affirmative believed that it is not necessary to direct this argument against federal procedure for, they said, federal procedure is already similar to British procedure. Now, My Friends, they may be laboring under a delusion. *Allow me to call your attention to these differences in federal procedure and British procedure!* In the first place, in British procedure, bills of particular are optional. In federal practice they are not. In British procedure there is a short time allowed for an appeal. In federal procedure that time is not so limited. Furthermore, in British procedure, the judge is almost tyrannical in his power, for he has the right to comment on the failure of a person to testify in his own behalf, which amounts to the same as forcing a prisoner to take the chair, whether he be illiterate and unable to defend himself, or not. In federal procedure we have a

strong judge, able to interrogate the jury as well as the witnesses, but that power does not go so far that he can comment on the prisoner's failure to testify. Furthermore, in British procedure, technicalities in the indictment constitute ground for appeal. *Technicalities are still possible in British procedure, in the indictment, but in federal procedure any technicality does not constitute ground for an appeal!* Then again, the method of selecting juries is different. In England, the lawyers are allowed to interrogate the jurors. In some cases, lawyers have thirty-five peremptory challenges, and in felonies British lawyers have twenty peremptory challenges. But, in federal procedure in the United States, lawyers for prosecution and for the defense have each only ten peremptory challenges. And this significant difference stands out: in the United States the judge directs all of the examination. You say British procedure and federal procedure are similar? Maybe so. They are similar just as a mule is similar to an elephant, in that they each have four legs. There is an outstanding difference, and the gentlemen of the Affirmative, in interpreting the word "throughout" to mean only "a part," have missed the true interpretation of that word.

What constitutes criminal procedure in the United States? Ladies and Gentlemen, it is made up of two types. First, there is *state* criminal procedure as it exists in the several states. Then there is this *federal* criminal procedure. It is absolutely necessary, in this debate, that we keep these two types of procedure constantly before us, because they make up the sum total of all criminal procedure in the United States. It should be the duty of the Affirmative, by their position on this question, in order to show that there is a need for reform in our criminal procedure, it is necessary for them to show that there are defects not only in state procedure but in the federal procedure, and if they cannot do that, then they have failed to show that a big part of our criminal procedure is inefficient. They have admitted that federal procedure is already similar to procedure in Great Britain. They have not dealt with it. Look at their illustrative cases. Every example they have given of a technicality or a delay or a miscarriage of justice has been an incident under *state* procedure, and they have failed to show any instance under federal procedure. Now, in admitting that *federal* procedure is similar to British procedure, they are advancing our case, for

here is the negative position, and mark you it well so that there may be no misunderstanding: The Negative agrees that in state procedure there are these defects, and that they should be improved by all means as no sane man can defend our state procedure. But we deny that the same defects they are talking about, or any defects equally as great are existent in this federal code, which is national in scope and uniform in application, and we challenge the gentlemen of the Affirmative to show where any one of those defects or any defects equally as great exist in our federal procedure.

We believe that there is a need for improving these defects, but we believe that these defects can be improved by the extension of this code which we already have here, having about a hundred and fifty years of successful precedents behind us, having features adapted and adaptable to American conditions. Our contention is this, that these defects in state procedure can be improved and remedied without taking the criminal procedure of Great Britain.

It may interest you to know that federal criminal procedure, the federal criminal code, is really older than the criminal procedure of Great Britain; that these principles of speedy justice, and so forth, for British procedure were not culled out and reformed to make for speedy trials until about 1850, when there began a series of reform bills. But federal procedure was reformed and acquired its principles that it has today essentially, in the beginning of the nineteenth century—fifty years difference.

And in this connection it might be well to see what English thinkers think about federal procedure. Winston Churchill has made this remark: "There is a need in England for standardizing criminal procedure, even as it exists throughout the federal code of the United States."

The federal procedure of the United States, which the Negative is advocating to be extended, has been revised from time to time, the latest revision being in 1925. It has always held these fundamental principles, but it has been revised from time to time in minor details to meet changing conditions. The latest revision was in 1925, when a committee from the House of Representatives, the United States Senate, and a committee of very eminent jurists of the land met and, at a cost of $300,000, went over the complete system and did the final work of weeding out inefficient details.

We believe, I say again, that this procedure, different from that of Great Britain, better in many respects, if extended to the states will give us a code of criminal procedure uniform in application, national in scope and with these defects corrected.

Now, so far as I have been able to follow it, the gentlemen of the Affirmative have pointed out about four chief objections to state procedure. They have been talking about *state* procedure. They have been talking about *state* procedure alone, may I remind you. These are: Technicalities in the indictment, powerless judges, faulty appeal procedure, and poor selection of jurors. I have not much time left. I shall endeavor to try to show you how at least one of these is taken care of in federal procedure if extended. My colleague, the third speaker, will continue to show how every defect that they bring up will be improved by federal procedure.

In regard to technicalities in the indictment. The United States federal indictment, in addition to being much shorter and less technical than state indictments, has this characteristic: "No indictment to bind a person by a grand jury shall be deemed insufficient nor shall the trial, the judgment or any other proceeding thereon be affected by any matter of imperfection in the matter of form only."

I thank you.

Mr. Lichtenfels: The constructive case for the Affirmative will be concluded by Mr. James H. Ronald, of Earlham.

THIRD AFFIRMATIVE

James H. Ronald, Earlham

Mr. Chairman, Honorable Judge, Worthy Opponents, Ladies and Gentlemen: A high-powered motor car swept into a north side Chicago garage, gangsters posing as policemen swarmed out of the car, lined seven helpless, unarmed men with their faces toward a white brick wall. Then they mercilessly mowed them down with automatic pistol and machine gun. This innovation in executions, which was carried out with all the precision of an army firing squad, is a direct result of the system of criminal procedure existent in our courts today.

Gentlemen of the Negative may say that it is due to our system of apprehending criminals. What if they are caught? What happens? Months would roll by, and the sentimental press would portray with large black type the crime, and then, soon afterward transform a murderer into an innocent, snow-white person, and an ultra-sentimental public would weep briny tears over the poor unfortunates. Money would buy lawyers to hunt for technicalities. A trial is to hide not to find the truth. So we let justice be drowned with tears. We let justice be strangled with money. We let justice die of old age. And the poor, unfortunate gangsters go free to commit bigger and better executions, and the drama is started all over again.

Although the Affirmative does not maintain that the defects in criminal procedure are the only causes for this flagrant disregard for law, we do maintain that they are contributing factors of high importance. To prove our case, we are unfolding our arguments this evening.

The first speaker has given an introduction to the question and has shown the deplorable crime conditions existent in our states today. The second speaker has shown how imcomparably better the English system is in its certainty, its celerity and its finality. For several years I have been interested in attempted reform of the American criminal procedure, and for the last two years I have been an ardent advocate of bringing the English system to the United States. For this reason it is a pleasure to have the duty to show why the English system should be brought to the United States. The gentlemen of the Negative have admitted that crime statistics show deplorable conditions in the states. When we find that, out of twenty thousand people indicted for felonies in Chicago last year, less than one out of thirty was convicted; when we find there are one hundred times as many burglaries in Chicago as in all of England; when we find that there were more homicides in a single county in Alabama—Jefferson—than in all England, Ireland, Scotland and Wales, combined, in 1921; it is easy to see that reform can come none too quickly. Assuming that reform is necessary, it is logical to turn to that system which is working best in the world and which is being used in part in our own United States and in our federal courts.

In our debate this evening the traditional functions of the Affirmative and the Negative are somewhat changed. The

Affirmative is advocating a status quo this evening, if we can use the term "status quo" in speaking of the tendency in American procedural reform. Massachusetts is using the simple indictment, as in England. California permits no reversal of a decision on a mere technicality, providing no error has been made to keep the defendant from having a fair trial. Other states, such as Michigan and Missouri, have adopted parts of the English procedure, and since it seems to be a prevailing tendency, the Affirmative is advocating only a swifter education of the public to its value.

The Affirmative is fortunate this evening in not having to bring up some new and untried system. Indeed, we are sponsoring an ever-spreading tendency for an enlightened procedural reform. Let me quote from William Howard Taft, Chief Justice of the United States Supreme Court, head of the federal law: "A murder case in England will be disposed of in a day or two days that here will take three weeks or a month, and no one can say after an examination of the record in England that the rights of the defendant have not been preserved, and that justice has not been done." "I do not doubt for one moment," says Judge Taft, "that much of the lawless violence and cruelty exhibited by lynchings is directly due to the uncertainties and injustice growing out of delays in trials, judgments and the execution thereof by the courts."

The gentlemen of the Negative have inferred that diverse conditions in America, and the conditions of the American mind, make it impossible to bring the English system to the United States. In refutation of this let me cite such cities as Detroit and Cleveland, cities of the most diverse foreign elements. In Detroit, where they unified the court system and speeded up trials, as in England, I find that in 1920, 6 per cent of felony cases were tried in the first six weeks after the crime was committed. One year later, under the English system, 96 per cent of the felony cases were tried in the first six weeks. As a result of this English system of speeding up trials, burglaries fell from 1535 to 512 in number in one year; robberies from 621 to 225; and under the new court speeding up trials, automobile thefts decreased enough in two years to save automobile owners one million five hundred thousand dollars in insurance premiums alone.

The purpose of criminal law is to protect society. The institution of allowing bail to hardened criminals defeats this purpose. In Chicago in one year 426 defendants forfeited, in order to avoid even the risk of trial, $1,499,000. More than one hundred people are arrested annually in New York for new crimes while they are out on bail for offenses for which they are still awaiting trial. In one case nine separate indictments for nine different offenses were returned against one man during the year that he should have been in jail. Let us take the case of Ace Pendleton, which is typical; eight times a murderer, twenty times a bank robber, Pendleton recently defaulted on $2,000 bail, and is today at large, a menace to society. The Affirmative would abolish bail to people with criminal records, and would speed up trials so that the innocent might not languish in prison, and so that the guilty might not menace society.

The Affirmative would simplify the indictment, as it is done in Massachusetts, California, Louisiana, Michigan, Missouri and other states, so that technicalities may be made impossible. Cases in Texas, Illinois, Alabama, West Virginia, Ohio and other states show that this step is advisable. A survey of trials in Missouri and Massachusetts since the simplification of the indictment shows no resort to technicalities as formerly, and no one has accused those states of being unjust.

The Affirmative would give the judge more power, as is done in the federal court system that the Negative have pointed out to you.

Then we would advocate the selection of a jury prior to the trial, to save loss of time and money.

The Affirmative would limit the number of appeals to one, and would allow no reversal of the decision on mere technicality. California and other states have followed this latter step, and Indiana, our own state, allows only one appeal.

The Affirmative would allow both the state and the defendant to appeal, provided a defendant was not acquitted at the first trial. New York leads the other states in adopting this plan.

The Affirmative would give the court of appeals the power to decide the questions of fact as well as of law. The Sacco-Vanzetti case shows the need for a court with power to decide on questions of fact as well as of law.

If these few steps were taken, we should have a system similar to that of Great Britain, and the plan of the Affirmative would be not a dream but a reality.

The Affirmative closes its constructive case maintaining that a code of procedure similar to that of Great Britain should be adopted in these United States.

I thank you.

MR. LICHTENFELS: The constructive arguments will be concluded by Mr. Lloyd P. Dudley, of Wabash College.

THIRD NEGATIVE

Lloyd P. Dudley, Wabash

MR. CHAIRMAN, LADIES AND GENTLEMEN: You will recall the gentleman who just left the floor opened his constructive speech with the recital of that mass murder in Chicago a few weeks ago, and he showed you how, if those men were dragged into court and tried for the murder of their seven victims, they would escape; how the yellow press would portray their pictures and their sob story throughout the country, and all the different outside influences that would work upon the decision of that court. My Friends, I wish to remind you of two fallacies in the gentleman's argument. The first is, that those things have absolutely nothing to do with criminal procedure, *by their own definition.* The second thing is, that such a case might be true under the state codes under which that trial would take place today, but under a code such as we advocate, as the extension of the *federal code,* that thing could not happen. Allow me to call your attention to the trial in Indianapolis a few years ago of one Governor Warren T. McCray. He was first arraigned in the *state* court on a charge of defrauding. It took that court ten days to pick a jury. The trial lasted three weeks, the jury disagreed, eight to four. Three weeks later he was indicted in *federal* court, under Judge A. B. Anderson, on a much finer point, that of using the mails to defraud. What happened? Instead of taking ten days to pick a jury, it took thirty minutes; and instead of lasting three weeks, the trial lasted three days; *and two days later Governor McCray*

was on his march through Georgia, not to the tune of Yankee Doodle, but to the tune of the Prisoner's Song. But, unlike Sherman, he never reached the sea!

Then, My Friends, just a few months ago we had another trial, of which we all know, in the city of Indianapolis, in Judge Baltzell's District Court. I speak of the auto ring conspiracy. The jury for that trial was picked in forty-five minutes, the trial lasted four days, and sixteen men started on their way to Leavenworth, Kansas.

My Friends, these two cases came under federal criminal procedure. Now, I ask you, does this not remedy the evil of the selection of the jury; does this not remedy the evil of technicalities in the indictment? Did those men escape punishment on a technicality in that indictment? No. If there had been a technicality in that indictment, those men would not have been able to escape, for the judge would have had the power at any time to correct that mistake.

Then they speak of the failure of a man to testify, and call it an evil because a judge cannot comment upon that fact. My Friends, we do not want the judge to comment on the fact that a man has failed to testify. Suppose you, an innocent man, were upon trial, would you want to testify in your own behalf? Take a poor, uneducated, crude, laboring man, innocent, and put him on the witness stand, confronted with a sharp, wily lawyer, with four years of preparatory college, three years of law school and twenty years of experience behind him in just such cases, and what have you? You have here a man, poor, uneducated, who knows nothing of court procedure; who knows nothing of how to answer those questions. He is nervous, because his life is at stake. On the other hand, you have a man who has spent his life in just this kind of work, and who has nothing to lose and everything to gain. I ask you, is that fair?

These gentlemen have constantly dwelt upon the number of convictions that are reached in England and in the United States, and then they have cited the Sacco-Vanzetti case as a sample of long-delayed justice. But they are a little contradictory, My Friends. Their idea seems to be the quick conviction of every man who is charged with crime, whether he be innocent or guilty. Now, what are they going to do with innocent men? He quarrels with us because the Sacco-Vanzetti

trial lasted a long time. I admit if that trial had been under federal procedure, it would have been very short, and concluded in a short time. Under the English procedure it probably would, too; but then, what is their quarrel, when they quarrel with us that there is an innocent man that was hanged, and yet they want more convictions?

They speak of this insanity plea, and call that an evil.

Allow me to remind you that under the English procedure a man may plead guilty but insane. If convicted, he is sent to the insane asylum. If he regains his sanity, he is sent to prison to finish his sentence which the judge has imposed upon him. They have quoted us the Remus case, but what have they done? They have taken one solitary, exceptional case. Is that general in our criminal trials? A man may be insane, and what are they going to do about that? I suppose if a man is insane, they would hang him for a murder, when he did not realize the consequences of his act. It cannot be done, My Friends.

This system that they advocate, the English criminal procedure, is a ruthless thing. It takes into account no consideration of the innocent man. It assumes that every man who is brought before the court is guilty before he comes into court. We in America have an axiom or a principle that "A man is innocent until he is proven guilty."

They claim as one of the evils in our American courts, as they call it, the powerless judges. Such is true, My Friends, under the *state* code of criminal procedure, but I again remind you, it is not true under the *federal* code. The judge, under the federal code, is powerful to a certain extent. He has the right, when that trial is finished, to sum up the evidence of both sides, to interpret the law, and instruct the jury whether, in his opinion, the accused is guilty or innocent. If any technicality comes up, error in the indictment or in the judge instructing the jury, in order to benefit from that error, counsel for the defense or the prosecution, as the case may be, must call the judge's attention to that before the jury retires to decide the case. If they do not, it constitutes no ground for appeal. And, if they notice it before, it constitutes no ground for appeal, for then the judge can correct any error, or any mistake in the indictment.

Ladies and Gentlemen, before I close, I want to go back once more to this argument of the Affirmative that they are

disregarding the federal code entirely because it is similar to that of Great Britain. Our second negative speaker has shown to you how it is not similar. They have not yet contradicted his argument. But I want to make it as clear as possible that there is no similarity between these two codes, as we consider similarity. You can say the American state criminal code and the federal criminal code are somewhat similar, but there are differences. You can say that either one of them is somewhat similar to any code in the world, for they are all based upon the same principles—but there are differences. My Friends, isn't it logical to suppose that the English people, in 1850, when they planned a revision of their own criminal code, looked to America, seeing a federal code that had operated for fifty years efficiently, speedily and justly; they saw a people whose laws were based upon the same common law as themselves; and I ask you is it not reasonable to suppose that they patterned their own code after ours? The proposition these gentlemen are offering is something like this: They would think of trying out a code in the United States that in all probability the English people have adopted from us, and bringing that same thing back in. In other words, it is much like a slapstick comedian who throws a vase out of the fourth-story window, and runs down four flights to catch it and bring it back again.

I thank you.

Mr. Lichtenfels: The opening rebuttal will be given by Mr. Trippet, of the Negative.

FIRST NEGATIVE REBUTTAL

Byron K. Trippet, Wabash

Mr. Chairman, Ladies and Gentlemen: The fundamental question in this debate has come down to this: Should the British code of criminal procedure be adopted throughout the United States, or should the federal procedure be extended to remedy the defects which both teams are agreed upon.

Now, Ladies and Gentlemen, if the Negative can show adequate reasons why British criminal procedure should not be adopted, haven't we accomplished our object? Suppose we take a look at the affirmative argument.

Every important thing that they have advocated is taken care of in federal procedure. Every defect that they have criticized can be remedied by the extension of our federal procedure. We did not get to touch upon all of the defects and all of the improvements which they advocate. We have told you how indictments are shorter and free from technicalities in the United States federal code; how the judge has more power; and how the selection of juries is speedy in federal procedure, which would be the same if extended to the state. Those are the improvements which the Affirmative are advocating. We have them already here in the United States.

There is one objection which they have brought up which we have not dealt with—faulty appeal procedure. Now, if federal procedure were extended, it is true a man would have a chance to appeal, but that appeal would have to be on adequate grounds. There could be no appeal on a mere technical mistake or an omission, for this reason, the federal judge has the power to correct at any time any technical mistake that may come out in a decision, in an indictment, demurrer, or any paper, and thereby he removes the technical grounds for appeal. What constitutes the ground for appeal? The lawyer for the defendant, in our state courts, goes over the evidence or the indictment, and he finds a technical error. It is on the basis of that that he appeals, and if the federal procedure were extended, that ground of appeal would be removed. Remember this: in federal trials neither the defense nor the prosecution can take exception to the judge's instructions to the jury unless they do so before the jury has retired, and unless they call his attention to a mistake, so that he has time to correct it, they must seal their lips forever on that point. Therefore, the grounds for appeal are removed.

That is the other objection which the Affirmative have brought up, and we have shown to you how federal procedure will take care of it, if extended.

Now, remember this: *Federal procedure is not similar to British procedure!* In my constructive case I pointed out the differences in the two systems: Bills of particular are optional in England, they are not in the United States; the judge has much more power in England, almost tyrannical power, while in the United States it is limited; technicalities still exist in the

indictment in Great Britain, but they do not in the United States; and the methods of selection of juries are different.

There is another argument which they have talked of, namely, bail. They have advocated the abolition of bail to men of criminal records. But is that British? I hold in my hand a book of criminal procedure in Great Britain: "Bail is never allowed in case of treason and murder. It may be allowed in felonies and graver misdemeanors. It must be allowed in lesser misdemeanors." In this whole book there is absolutely no statement as to the abolition of bail to men of criminal records.

My Friends, it seems to me that for every argument the Affirmative have brought up, the Negative have shown that it will be remedied by the federal procedure. And in addition we have pointed out that it is not the same as the British procedure. It is American, and it has precedents which, if applied, will bring us the desired result.

I thank you.

Mr. Lichtenfels: The rebuttal for Earlham will be opened by Mr. Miser.

FIRST AFFIRMATIVE REBUTTAL

Robert S. Miser, Earlham

Ladies and Gentlemen: The Negative, in their first constructive speaker, have asked the Affirmative what are the faults of our procedure, and then have gone ahead to admit that there are faults in our procedure. Allow me to call to your minds again things in the American procedure which the Affirmative believe are faulty, namely, technicalities in the indictments, a powerless judge, an inability to point out the fact that the accused has failed to testify, an indiscriminate bail system, and a poor appeal system.

The Affirmative have shown this evening what parts of the British procedure are better than parts within our own system. We have gone ahead to show how a simple indictment is one of the things which the Affirmative wish to introduce in American procedure from British procedure. The Negative have attempted to show that the American federal indictment

is more simple than the indictment in the British system. But, from the Indictment Act of 1915, we find this form of indictment prescribed for the British courts: It starts out, "Murder," and after that, the particulars of the offense, and following that, "A.B. on the ——day of——in the county of ————murdered J.X." Now, that is certainly a simple indictment, one in which there is no possible room for error. So that is one thing that the Affirmative would wish to introduce from British procedure.

Following that, we would do away with many of the insanity pleas and the procedure the American court goes through at the present time for taking care of that kind of person.

The Affirmative would give more power to the judge. We believe in the American judge as much as we do in the judges of Great Britain. We believe that the man who is supposedly at the head of the trial should have the power to conduct it as he sees fit. We believe that he should have the power to sum up the facts of the case at the end, and give points to the jury which it should consider in voting on the case. We believe that the judge should have the power to point out to the jury the fact that the accused has failed to testify for himself. The Negative have brought up the fact that a poor, illiterate man would stand little chance of answering the questions of a present-day American prosecutor. The Affirmative admits this, but an innocent man needs no such protection. If, under British procedure, a prosecuting attorney attempted unfair questioning and questioning which would incriminate a man who was supposedly innocent, the judge could stop that questioning and tell the prosecutor to proceed with points which would not necessarily incriminate this accused person.

Following that, the Affirmative would advocate the adoption of an appeal system similar to that of Great Britain. An appeal court should have power to bring before it any witness who could have been compelled to appear in the first trial. This would do away with retrials. It would get new facts on the case before the appellate court, but would not reverse the trial court and necessarily make the case eligible for retrial in the first court.

So, Ladies and Gentlemen, because there are certain parts of British procedure which the Affirmative believe are very much better than those certain parts within our own procedure, we

would advocate an adoption of a criminal code similar to that of Great Britain, within the United States.

I thank you.

MR. LICHTENFELS: The negative rebuttal will be continued by Mr. Dudley, of Wabash College.

SECOND NEGATIVE REBUTTAL

Lloyd P. Dudley, Wabash

MR. CHAIRMAN, LADIES AND GENTLEMEN: Let us consider just what the last speaker has done. In summarizing their case he has pointed out one by one these, what they call evils, in the present state codes. He calls these the American codes. My Friends, he does not mean that. He means the *state* codes of the United States. I want you to bear in mind the two different kinds of codes, for we have those used in the forty-eight states, and the *federal* code.

As far as some of these evils are concerned, the power of the judge, the appeal, the selection of the jury, the simplified indictment—they are evils in the *state* codes of criminal procedure, but they do not exist, as we have shown you, in the *federal* code of criminal procedure. As far as the power of the judge to comment on the failure to testify, and as to the insanity pleas—we do not consider those evils. We do not consider it one iota of evil when an innocent man is given an equal chance to get justice. It is not the fact that the opposing lawyer might ask him the wrong kind of questions that is unfair. It is the fact that that man is under a nervous tension when he is on that witness stand. His life is at stake, and he knows if he makes one little slip, that lawyer, with his powers of persuasion and his eloquence, can turn to that jury, for jurors are only human beings, and can twist them around his finger to believe that this man is guilty, whether he is or not. And, with the strain upon his nerves, the chances are a thousand to one that in the questioning, he is going to make the wrong kind of an answer—*any kind of an answer, to get out of that witness chair.*

As to the power of the judge in reviewing the case and in instructing the jury, we have shown you how that is taken care of under the federal procedure.

On appeals, we have shown to you that we do not want so long a time to perfect appeals. We want time enough for the

man who is poor to get enough money to perfect his appeal, and the poor man, under such a code as they propose, would have no chance. It would be only those habitual criminals, backed by money, who would have the opportunity.

As to the selection of the jury; we have shown you how, under the *federal* procedure, the jury is selected in a short time. This afternoon we spent some time up at Judge Baltzell's court in Indianapolis, and we learned from the Clerk of his court, who has been in that office for something like eight years, that in all his time in that court *there had never been a federal trial in which it took over forty-five minutes to select the jury, and most of them but about a half hour!*

Then, the simplified indictment evil. We have shown to you how the federal indictment is short, and even then, if there is an error, the judge can correct that error.

Now, My Friends, I want to go back again in closing to this argument which they might bring up again about similarity of these codes. You know in law there is a maxim or self-evident principle that "a sane man presumes the natural consequences of his acts." When the men who worked up this question put in the word "throughout," they presumed the natural consequences of that word, for they knew that you only have one procedure in one court at one time, and they knew that all procedures are similar in a certain degree. I wish to ask them this question, if these codes are similar, why, in the name of common sense, wasn't this question worded: "Resolved, that the federal criminal procedure of the United States be extended throughout the entire forty-eight states," instead of a criminal code similar to that of Great Britain?

I thank you.

MR. LICHTENFELS: Rebuttal by the Affirmative will be continued by Mr. H. George Peacock, of Earlham.

SECOND AFFIRMATIVE REBUTTAL

H. George Peacock, Earlham

MR. CHAIRMAN: In the debate thus far this evening the Negative have granted that the English code of procedure is today the best code of procedure that we know, any place in the world. They have not denied that statement. Then they have

turned right around and said that the state code which we have is utterly bad, and they have not attempted to deny any of the indictments that we may have made against it. They have said all these things that the gentlemen of the Affirmative are saying about the state code are true. However, they turn to the federal code. They say, on the one hand you have your state codes; on the other hand you have the federal codes. Now, the federal code is the thing we are trying to advocate tonight, according to the gentlemen of the Negative. They point out that, if we accept this federal code we will have all of the defects which the gentlemen of the Affirmative have indicated are inherent in the very nature of our state codes, removed. Ladies and Gentlemen in this audience tonight, I hope that you have noticed throughout the course of the negative argument that in every single case where the Negative have tried to show that the federal code was a remedy to our situation, they have used the very arguments which I, in my constructive speech, showed were the arguments for the criminal procedural code of Great Britain. They have said, bring this federal code into extension throughout the United States and you will have celerity, you will have speed; bring this federal code throughout the United States and you will have certainty; and furthermore, you will have finality. These things are the things that will make for similarity.

They have said, because we do not adopt bills of particular when we adopt the English code; because we do not adopt the indictment exactly as it is in these United States in the federal code today; because we do not adopt the selection of juries in exactly the same manner; and furthermore, that the judge in England is tyrannical under their code; that we will not have similarity. Bear with me while I re-read the definition of the Affirmative of "similar" as we gave it in the opening of this debate. By "similar" we mean, "identity in general principle, with alterations in detail to meet the exigencies peculiar to the United States." And, if it is to our advantage not to adopt these four institutions which the federal code has, which the English code does not have, then, Ladies and Gentlemen, let us not adopt them. It is not necessary. We are not arguing in this debate tonight for identity. We are arguing for similarity, and we maintain that, if you bring over four-fifths of those things which are the best arguments for the code of Great

Britain, you are bringing over a similar code to the code which they have in that country.

They have said that the judge in the federal court is strikingly different from the judge in the English court. I should like to read from Chief Justice Taft, who certainly ought to be the best authority on the federal court of the United States. He says: "The procedure and rules of evidence should not be such that the lawyers can weave a web to trip the trial judge, which the upper court by reason of technical rules would have to set aside." This is the important thing about this quotation: "Neither the English judges nor the judges of the federal court are restricted in the aid which they can give to the jury to enable it to understand the real issues and to weigh the evidence intelligently."

Here again we see that similarity is again evident between the federal code of the United States and the code of Great Britain, exactly what we have spoken for in this debate thus far this evening.

Then they have stated that the Remus case was an exceptional case, but I shall refute that statement by saying that where any trial might be brought up on an insanity plea, in the state of Ohio, the same thing would happen. And if they should like to have another case, we should like to cite that of Leopold and Loeb, in Chicago, one well known to you all, in which those two youths who pleaded guilty to that charge, got off, and were able to evade the possible death sentence by simply stating that they were criminally insane. This technicality has caused a great deal of difficulty in our country, and warrants a change in procedure.

I thank you.

MR. LICHTENFELS: The concluding negative rebuttal will be presented by Mr. Schoenberger.

THIRD NEGATIVE REBUTTAL

Edwin W. Schoenberger, Wabash

MR. CHAIRMAN, LADIES AND GENTLEMEN: It is not our purpose to quibble over the wording of this question, but we

fail to understand why the word "throughout" was used when the gentlemen of the Affirmative are interpreting it continually as "a part." We fail to see why the founders of this question put the word "throughout" in there, and stressed that word, thinking all the time of the two procedures. If the criminal procedure of Great Britain is similar to that of our federal government, why was not the question worded that we extend the federal procedure to the states? It seems to me quite self-evident that they inferred by the very wording of this question and by the application of the word "throughout," that they wanted to take in every code, every criminal procedure in the country. If the one in Massachusetts is somewhat similar to Great Britain's; if the one in Missouri is not quite so similar; if there are certain things in our federal code that are procedures like those in Great Britain; the question assumes that we take all of these and throw them out, and bring a system in similar to Great Britain's—a system, not parts of a system.

The gentlemen have said that at no time during the debate have we disputed the fact that the British code was absolutely the best code available. I think the very fact that we have shown five differences between our federal code and the British code and have advocated the adoption of the federal code because of those five differences, shows that we do not accept the British code as absolutely the most superior one available. We have pointed out to you during the debate those five differences. Bills of particulars are optional in Great Britain but compulsory in the United States; a short time for appeal in Great Britain but an amount of time to appeal, in our federal procedure, which allows an innocent man a chance; the judge has the right to comment on the failure of the witness to testify, in Great Britain, but does not have that right in the federal procedure. We contend that that privilege exists in the federal code, but would not come through the British procedure, and is an advantage. We have shown that technicalities exist in British procedure at the present time in the indictments, but no technicalities can exist in our federal procedure in indictments. We have also shown that the methods of selecting juries are different between the two procedures, and are superior in our federal procedure.

The gentlemen have failed to show us why we should not extend our federal procedure, which is the plan we are

advocating, and it seems to us that is the question that the gentlemen of the Affirmative should answer, and bring up to us why we should not extend this federal procedure. So far in the debate they have listed a number of defects or a number of faults in our American procedures, as they call them. You will notice we have admitted all of these faults as existing in the states, and those faults are existing, and we hope to remedy those with an extension of the federal procedure.

In the first place, technicalities that exist in the state courts at the present time will be removed by an extension of the federal procedure. Appeals are taken care of in a much superior manner by the federal procedure, than by the British procedure. We have shown that failure to testify, as being commented on by a British judge is unjust and unfair to a person, and would force the person into the witness chair if the British procedure were adopted. We have shown that the selection of the jury is more favorable under our federal procedure than under the British procedure. Under the federal procedure is found a golden mean between the autocracy and the absolutism of a British judge and the absolute failure of any power in the state courts. In this way we adopt a sort of mean, or an average between the two procedures. We have shown that federal procedure is different and was concerned in this question when it was brought up in the first place, and for that reason we contend that the federal procedure should be adopted and extended throughout the state courts to take care of these troubles. Because we have the federal procedure at the present time, it is continually with us, we are familiar with the federal code, and beyond a doubt it will work in this country.

I thank you.

Mr. Lichtenfels: The rebuttal argument will be concluded by Mr. Ronald, of Earlham.

THIRD AFFIRMATIVE REBUTTAL

James H. Ronald, Earlham

Mr. Chairman, Honorable Judge, Worthy Opponents, Ladies and Gentlemen: The Negative in the debate this

evening have argued against the shyster lawyer. The shyster lawyer is unknown in England because technicalities are unknown. The shyster lawyer who turns the process of ascertaining the guilt or innocence of the defendant into a game of wit and subtle learning is the bane of all honest and upstanding lawyers today. The man who shames justice for gold, and who glories in the dishonor of acquitting guilty men, we cannot get rid of under the federal code or under the state code. We can get rid of him by abolishing technicalities; by substituting for technicalities, truth and justice; by substituting for slow movement, speed; by substituting for blundering, certainty. The Negative in the debate have placed themselves in a position to take over the federal code, and they would leave out of account the good points of the state code modeled after the English procedure. Would they ask for improvement through the federal code, when our state codes have gone on even further by using parts of the English procedure? They say the law in England is a ruthless thing, yet England leads in matters of the probation to criminals.

They have great difficulty over the word "throughout." The thing the Negative would like to do in the debate, in the opinion of the Affirmative, would be to define the word "throughout" to suit the Negative and then argue with this in mind.

Bail is allowed in England, "only in small misdemeanors, not the more serious crimes and to no one on trial for treason and murder"—taken from William Howard Taft in the *Annals of the American Academy.*

Let me summarize the debate this evening so far. The first speaker has shown deplorable conditions in America as they exist today. The Negative have admitted that deplorable conditions exist in America today. The second speaker showed how incomparably better the English system is in its certainty, its celerity and its finality. The second speaker of the Negative maintained the federal code as the most perfect code. The third speaker of the Affirmative advocated the English system, and the third speaker of the Negative advocated our federal system. Thus we see that the debate hinges on whether we should adopt the English system or the federal system. The third speaker of the Negative said that England patterned their new

code of criminal procedure after the federal system, therefore we see that the two systems are somewhat similar.

The Negative have placed themselves in a dilemma this evening. They have said that the state systems are bad; criminal conditions show it. They have said that the English system is bad, and they have attacked the English system. They therefore choose the federal system, a modification of these two systems. Unable to choose between the lesser of the two evils, they choose a modification of the two evils. You can see that they are arguing against themselves.

We have asked for a plan similar to that of England, where we would abolish indiscriminate bail; we would simplify the indictment; we would give the judge more power in guiding the trial; we would select the jury prior to the trial; we would limit the number of appeals; we would advocate a more powerful court of appeal, the appeal to be decided on questions of fact as well as of law. These reforms are much better, in the opinion of the Affirmative, than the reforms suggested by the gentlemen of the Negative. They choose a modification of two systems which they say are bad. We choose a system which we say is good and which the Negative has failed to disprove this evening.

Thus, the Affirmative closes the debate this evening, maintaining that a criminal code similar in procedure to that of Great Britain should be adopted in the United States.

The debate is over. Let me say, to return the compliments of the first speaker of the Negative, that we are very glad to entertain Wabash in our new building here, and we have been very fortunate in being able to debate Wabash this evening, and it is to be counted a great privilege; and we hope that forensic relations between Wabash and Earlham may continue to be as happy as they have been in the past.

I thank you.

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CHAPTER III

WOMEN IN INDUSTRY

UNIVERSITY OF SYDNEY
versus
UNIVERSITY OF ARIZONA

RESOLVED: *That the emergence of women from the home is a depressing feature of modern life.*

This is a stenograhpic report of the debate between an affirmative team representing the University of Sydney and a negative team representing the University of Arizona, held at Tucson, Arizona, on October 27, 1928. It was one of the series of debates participated in by the men of the University of Sydney on the occasion of their debating tour of the States during the Fall of 1928. The decision was by vote of the audience and was in favor of the Negative. This report of the debate was secured thru the courtesy of Professor Arthur Cable, Director of Forensics of the University of Arizona. Acknowledgment is also hereby made to Mr. Alvin W. Clark, Reference Librarian of the University of Arizona Library, for the bibliography which is included.

BRIEF

WOMEN IN INDUSTRY

AFFIRMATIVE

INTRODUCTION:

A. The Affirmative are making this argument against the emergence of women into the business world, out of consideration for the woman herself.
   1. It is to her own interest that she revert to the position she formerly held.

The emergence of woman from the home is to be deplored, because

I. It represents the abandonment by her of her own sphere.
   A. Woman was meant by nature for the home.
      1. This truth is evident throughout the entire animal kingdom.
      2. She cannot achieve happiness apart from the domestic arts.
         a. Her vocation lies in rearing of children, in sewing and in cooking.
   B. She has already practically abandoned the rearing of children.
      1. This has a political aspect that is serious.
         a. National security cannot be maintained except by keeping up the growth in population.
   C. Sewing, as an art, has definitely disappeared.
      1. It amounts to a definite loss in the status of woman.
         a. Instead of carrying on in the ways which give her intelligent, if limited, work, she has gone out into the industrial world to be a machine.
      2. By competing with men, women are keeping them out of employment.

D. Cooking is an art of the past.
   1. We are now beset with a fearful array of foods and artificially prepared products on every side.
      a. These foods are less palatable.
      b. They are much less healthful.
         (1) They are responsible for cancer, appendicitis, bad teeth, bad temper and bad morals.

II. It is having a most serious effect on marriage.
   A. Contact with men has made women mercenary.
      1. The great growth of divorce can probably be attributed largely to the emancipation of women.

III. It has had the effect of undermining the strength of man in the community.
   A. It tends to destroy the most vital attitude of man toward woman—chivalry.
      1. America has done more for the world by its romantic institutions, than by all its specializing, industry and commercial progress.
         a. By the heroic men who have kept it going.
         b. By all the people who have struggled mightily to make their homes.
         c. By the pioneers crossing western plains and building new empires.
      2. The world would be better off with sentiment and romance than with the commercial and mechanical ideas we have today.
   B. Men are being supplanted by women in the factories.
      1. It is harmful to the woman.
         a. Her charm is destroyed and her physical and mental powers impaired.
      2. Men are forced out of employment.

IV. Woman has lost many of the charms and graces that once made the world a happier place to live in.
   A. She is far less beautiful than her grandmother was.
   B. She is less feminine.
      1. She lost her charm and beauty along with her crowning glory.

2. The thing that attracts men to women is their femininity.
   a. It is difficult for a man to fall in love with a woman who looks, talks, dresses and acts the same as he does.

C. While feminine influence is a good thing for man, he can have too much of it.
   1. In married life, the greatest connubial bliss comes in homes where men and women are separated for a large share of the time.
   2. The introduction of woman in the business world tends to keep man away from home at night.
      a. He is subject to feminine influence all day, so will not be as willing to encounter it at night too.

V. It is disastrous for women to serve on juries.
   A. A vital requisite of a juryman is his reasoning.
      1. A woman is essentially a creature of her emotions.

NEGATIVE

I. In going into industry woman has merely adjusted herself to the changing order in social and economic affairs.
   A. In our early civilization, woman had four primary and fundamental functions.
      1. She took care of the agricultural duties.
         a. She sowed the grain, tilled the fields and reaped the harvest.
      2. She performed industrial pursuits.
         a. She wove the cloth, modeled the earthenware, and built the dwellings.
      3. She prepared the food in all its processes, acted as physician, and nurtured the children.
      4. She fulfilled her primary duty of perpetuating mankind.
   B. Gradually, man encroached upon these functions.
      1. He took over the agricultural work.
         a. It became no longer necessary for him to devote himself entirely to hunting.

2. He took away the function of industry from woman.
   a. Woman's work is now done by specialized and mechanical methods.
3. Present industrial and social changes have taken away from woman, to a large extent, her function of taking care of the home.
   a. Minor domestic operations are done by mechanical means.
   b. The supervision of children has been taken over to a large extent by schools, nurseries and kindergartens.

C. Her fourth function, the perpetuating of the race, has decreased in magnitude.
   1. Specialized labor has reduced the need for man power.
   2. The decrease in famines and wars, and the increase in knowledge of sanitation and medical care, have made large families inexpedient.

II. It is not true that the entry of women into industry has forced the men into unemployment.

A. There has always been unemployment in the United States, whether or not women were in industry.

B. Today, the Department of Labor says that unemployment in the United States is as low, with relation to the population, as it has been at any time in our history.

C. As a matter of fact, when woman goes into industry, she brings more income into the home.
   1. This means more money to spend for products, which increases the demand for labor.

III. Women are in industry today largely because the very happiness and well-being of their homes depend upon it.

A. Four-fifths of the women in industry today are unmarried.
   1. They must either stay at home and be supported, or go into industry and support themselves.
   2. It is only fair to give them the same opportunity

to aid in supporting the home as is given to their unmarried brothers.

B. The married woman goes into industry to improve the home and so fulfill her natural function.
   1. To aid her husband in providing more of the better things of life.
   2. For her own sake, after the children are grown and a large part of her work in the home is over.
   3. In widowhood, often to support herself and to keep a home for her children.
   4. To provide more comforts and opportunities for the children.
   5. Often to support a sick husband who is unable to carry on the work of providing for the home.
   6. Temporarily, as a newly married woman, to aid in starting the home and make it possible to have children earlier.

IV. The emergence of women from the home today is having a beneficial effect upon that institution.
   A. Marriage.
      1. Formerly marriage was the only vocation open to woman.
         a. She was forced for her means of support and social position to get herself successfully married.
            (1) The chances of a satisfactory marriage are greatly lessened when the elements of choice and mutual preference have to give way to necessity.
      2. Now women are refusing more and more to regard marriage as a profession.
         a. Marriages can now be based on higher and more lasting considerations than that of necessity.
      3. Married life is more satisfactory.
         a. Woman used to be in a state of financial dependence upon her husband.
            (1) This meant complete control and domination in other ways also.

(2) A satisfactory adult relationship was impossible in such a situation.

b. She is now, in the truest sense, his partner.

(1) Her contributions to the family are as important as his own.

B. The result will be the ultimate decrease of divorce.

1. The tendency to increase at the start is inevitable in any social change.

V. Woman has the same right to self-expression that man has.

A. It is as absurd to insist that all women find their careers in the home as it would be to demand it of men.

1. Not all women are fitted to be good housekeepers.

B. The only sanction for the keeping of women in the home would be that the preservation of the home is more important than the individual rights of women.

1. But the preservation of the home is no longer dependent on the continuous presence of women.

C. By entering into industry woman is contributing to an advancement that has so long been controlled by man as to be one-sided.

1. She is proving a decided asset in bringing about more uniform and balanced progress and advancement of humanity.

WOMEN IN INDUSTRY

UNIVERSITY OF SYDNEY
versus
UNIVERSITY OF ARIZONA

PRESIDING OFFICER
Dr. Homer LeRoy Shantz

I want to express, first of all, on behalf of the University and the Forensic Board our appreciation of the interest you have shown in the debate by your presence here tonight, and also to express appreciation to the musicians who have so kindly added to the beginning of our program.

It is a real pleasure tonight to welcome the debaters from the University of Sydney. We have had the pleasure, twice before, of debaters from other lands. The Oxford debaters were here in 1924 and again in 1926, and now we have the University of Sydney debaters here tonight.

A great deal could be said in praise of the work of our own debaters. Through their organized Forensic Board they have accomplished a great deal of work along this line and have attained, as you know, a very great degree of success in the past, and we of the University are very grateful to those who have carried on this work.

Tonight we are to have an international debate. The constructive speeches will be limited to twelve minute periods. The constructive arguments will then be followed by the affirmative rebuttal of eight minutes, and a negative rebuttal of ten minutes and these, in turn, by the rejoinder by the Affirmative of three minutes. At the end of the debate, you are asked to mark your ballots and turn them in to the ushers at the door.

I should like to introduce to you at the time the debaters on the Affirmative, who come from the University of Sydney, Australia. The first debater will be Mr. H. G. Godsall, the second speaker, Mr. Norman C. L. Nelson and the third,

Mr. W. S. Sheldon. The rebuttal and the rejoinder will be given by Mr. Godsall.

The negative debaters, representing the University of Arizona, —the first speaker will be Mr. Lawrence E. Rose; the second, Mr. Ivan Robinette and the third, Mr. Charles Reed.

We will now have a debate on the proposition,—"RESOLVED: That the emergence of women from the home is a depressing feature of modern life." The first speaker on the Affirmative, Mr. H. G. Godsall.

FIRST AFFIRMATIVE

H. G. Godsall, Sydney

MR. CHAIRMAN, LADIES AND GENTLEMEN: First, I should like to say, I am glad tonight to be here in Arizona. I cannot say that to me I seem to come here as a stranger, for I think I made my first connection with Arizona many years ago. It was when, without knowing very much about it, I used to sing a song about "Down in Arizona, where I was bred,"—which was, of course, utterly untrue. But what is interesting in this was that the ditty ran on to say, "And a merry sort of life I led,"—and there was no truth in that, for I have never lived here or been here before, but the song went on to say that the people there were always jolly and never mercenary, and I feel in my soul that that is true, for Arizona hospitality—my slight taste of it—has convinced me that those characteristics are truly shown here, and I should like to thank the University authorities and the people here for the cordial welcome given us. So far we have noticed in America that all official welcomes have been cordial, entirely cordial.

My second glimpse of Arizona was when I was down at Canberra, the new seat of the Federal Parliament of Australia, just before we left. There the Speaker of the House of Representatives showed me various things, and among those was a tree of yours, the Arizona cypress, and as this is the first time that an Australian debating team has come to the University of Arizona, I should like to express the wish that the relations, the friendship, between the two Universities shall grow like those graceful trees of yours.

And so, I should like to extend thanks, on my own behalf and that of my friends, and on behalf of the Commonwealth of Australia—a democracy like yours, more or less—and on behalf of His Gracious Majesty, King George the Fifth, my Sovereign, and Queen Mary, the other four-fifths, and I should like to say that in making this argument against the emergence of women into the business world, we are doing it out of interest to woman's concerns, and we feel that it is to her own interest that she revert to the position that she held prior to this alleged emancipation.

We hold that this emergence is to be deplored because, first of all, it represents the abandonment by her of her own sphere. No amount of argument can get around the great elemental fact that woman was meant by nature for the home. This is the first great lesson of zoology, and the truth is evident throughout the whole animal kingdom. How complete is this abandonment, is, I think, well illustrated by the definition in the Australian dictionary, or some other tome of corresponding authority, wherein they define the word "home" as "The place where a woman changes her clothes."

Now, in striving, then, for this unnatural emergence, for the things outside of her sphere, the modern woman is running counter to her own nature, and this brings us to the most pathetic as well as the most obvious feature of this question,—namely, that woman, in seeking for this unnatural emergence, is doing herself out of the only things through which she could get lasting happiness. For, as has been shown, woman's vocation lies in the domestic arts, in such things as the rearing of children, sewing, and cooking. She cannot be happy, I submit, apart from those arts which are in accordance with the trend of her nature,—yet to separate her from them is the unavoidable feature of this emergence.

And this emergence has already taken place. If she has not entirely abandoned the rearing of children, she has practically done so. And this was bound to occur, for the new conditions of life simply do not allow her sufficient time to give proper attention to these matters. Home is not a place for her to rear her children, but to change her clothes.

And this brings us to a kindred indication. Evidence is not lacking, in this present-day world of ours, to indicate to us that woman seems to have forgotten the great truth that her crowning

glory is her hair. Thus, her failure to rear children, and these other modern features and fads, indicate, I say, a defective and unnatural state of affairs.

But there is, of course, a serious political side of it. Not so long ago, an eminent political authority deplored the fact that if Australia wanted to protect herself from war—which was inevitable—it was necessary for her, within five years, to double her population. Now, that may sound a mite of cant,—but, on the other hand, the point is this, that even if it is true, Australia cannot secure her national security by these methods, by raising citizens with the ideas current amongst the women who have emerged.

Then, again, sewing as an art has already definitely disappeared. I think this great art has many advantages, one of which is, I think, undeniable—that by it things were always on the mend with the women of the family. But now, unfortunately, the reverse is true—I can speak for myself and my fellows, that our socks are as full of holes as ever, and that women simply don't give a darn. But I plead for her, in that losing that art of sewing amounts to a definite loss in the status of woman—that instead of carrying on in the ways which give her intelligent, if limited, work, she has gone out into the world to be besmirched by the dirty fingers of industrialism, where she turns a handle or a lever day in and day out, or punches a typewriter, or does some other similar mechanical, soul-destroying labor. She is turning herself from a human being into a machine. She is becoming like the material she uses to work with. She is going out into the field of labor and competing with men, and the results are deplorable.

And the extent of this competition of women with men is disadvantageous. I believe it is the practice here, as I know it is in Australia, that many of the city houses are replacing office boys by office girls. Now, I submit to you, that even if the girls are better than the boys, at catching the males, that that doesn't make up for the distinct disadvantage of cheating the men out of jobs. I don't know whether it is the case here, but it is the case in Australia, that there are even women bankers. Well, here I am forced to admit that women are excellent tellers, but the unfortunate truth is still existent that in taking up these positions they are keeping men out of employment.

And even that grand old art of sewing definitely indicates, I am sorry to say, the falsity of their whole ideas and beliefs. It used to be said that a stitch in time saved nine—now it makes a dress.

Then, again, cooking is a thing of the past. I think this is proved by the fearful array of foods and artificially prepared products that frown down upon us from every side. Now, besides, this is regrettable for two reasons—first of all, because the food is less palatable, and thus another glory has vanished from the earth with the emergence of woman; and secondly, because these artificially prepared products are much less healthy. It has given us cancer, appendicitis, bad teeth, bad temper, and a host of other evils.

But perhaps the most serious evil of the whole business is the effect that this emancipation is having on marriage. Now, I say that contact with men has made woman mercenary. Why, I am sure you will agree with me that today, even if a girl takes an interest in a man, you may be sure that her intentions are capital. And people tell me that, in America, married men are finding out, ere long, that what they thought was the work of Cupid, really was the work of cupidity.

Coming down on the train this morning from Los Angeles to Tucson, I read in the paper of a well-known American citizen who was marrying her fourth husband, and it was announced that perhaps one might draw the legitimate inference that before very long she might boast of the honor of having caught up with Peggy Joyce, who has, I believe, married five husbands.

Now, I believe that this is an indication of a weakening of the marriage status. Now, divorce is a serious evil, and its great growth can possibly be attributed to the emancipation of woman.

My colleague is telling me that my time is up now. For the reasons I have given, I ask you to believe that the emergence of woman from the home is a depressing feature of modern life.

I thank you.

FIRST NEGATIVE

Lawrence E. Rose, Arizona

Gentlemen from Australia, Ladies and Gentlemen: I am afraid I am a little worried this evening, after hearing the

gentleman from Sydney tell me that punching the typewriter is a soul-destroying occupation. I fear, after preparing these debate cards, that my soul is condemned to perdition; and I must also confess that after eating a can of prepared corn this noon, my temper is still good, my appendix feels tolerably well, and my teeth as yet show no signs of deterioration.

It is with a feeling of utmost pleasure that we of the negative team welcome our friends from across the ocean this evening. We hope that contests of this kind may be perpetuated in the future, particularly with such gracious and able opponents as those who face us this evening. We trust that in their short stay at the University of Arizona, the gentlemen from Sydney will have an interesting and instructive visit, and if they have closely observed the University of Arizona co-eds, we believe they will be prepared to admit that not only has woman proved equal to man, but that woman has even outstripped man.

Our friends from Sydney have evinced a very decided interest in American college life, a fact which has caused us some embarrassment; for when they asked us how many women students are at the University of Arizona, we were forced to admit, blushing painfully, that there are only about one out of ten.

You know, no man was ever smart enough to understand woman, but it becomes our necessary though difficult duty this evening to delve into the problem of woman's emergence from the home, one of the greatest of the present day problems, that of her participation in industrial and professional pursuits. You know, formerly women were only entitled to life, liberty and the pursuit of a husband,—but really, now, women are not half as bad as they are painted. For that matter, women painted in the middle ages, and they still paint in the middle ages.

The Affirmative this evening has said a great deal about woman's place being in the home. We say it would be more accurate to point out that woman's place is in the English channel. You know, no longer are children tied to their mothers' apron strings, and it takes very little ingenuity to figure that out.

Women have, at the present time, taken up constructive enterprise and have gone into all fields of extra-domestic activity. At the present time the co-eds are even studying to be locomotive engineers, in order to be out all night with the fast

"mails." But in spite of all this equality talk, man has one advantage over woman—when warm weather comes around, *he* can discard something.

Now, it is obvious, when we speak of woman's emergence from the home, that we are talking about the whole general trend of woman's exodus into industry and the professions, for it is plain that we cannot restrict ourselves to married women alone. The young woman, leaving the home of her parents and going out to work in the outside world is just as truly emerging from the home as is the married woman who substitutes outside work for a portion of her activity in the home which she has entered by marriage.

The gentleman from Sydney informed us that woman's place is in the home—they tell us that it is running counter to her nature to perform extra-domestic labor.

Let us look into this matter more deeply—let us go back into history, to see just where this idea arose that woman's place is in the home and in the home only. The question of women working is not a new proposition. Woman has always worked, but woman formerly had functions of constructive enterprise in the home which have steadily been taken away from her by the changing order of the economic and social world, by the dictates of a world which, through man's own blindness, has become a man-made world. We propose to show how woman has readjusted herself to the unnatural change which has taken place, and has voluntarily and courageously re-assumed her lawful heritage as a constructive contributor to the world today.

Formerly, in the early civilized ages, woman had four primary and fundamental functions. First, she took care of the agricultural duties—she sowed the grain, tilled the fields and reaped the harvest. Second, she performed industrial pursuits—she wove the cloth, modeled the first earthenware, built the dwellings (and yet they tell us it is unnatural for woman to do this industrial type of work). Third, she had to prepare the food in all its processes, to brew the ale for the tired husband, to act as the first physician of the race, and to feed and nurture the children. Fourth, she fulfilled her primary and fundamental function, that of perpetuating mankind.

Then came a time when man encroached upon the first of these functions. It became no longer necessary for man to devote himself entirely to hunting pursuits and to battling with

the foe, so he took over the agricultural work and woman retired into the home. However, she was still content with the work that remained—she still performed the industrial pursuits, took care of the home, and attended to perpetuating the race.

Then came the present industrial order, with its sweeping social and economic changes, and the function of industry was taken away from woman. Crude force has been replaced by delicate manipulative skill, and the work of womankind in industry is now done by specialized and mechanical means. The spinning wheels are gone from the home, and steam-driven looms now clothe the race. Houses are built, furnished and decorated by skilled labor; the process of food making and the domestic acts all have been simplified to an ever-increasing extent. And as for woman brewing the ale, the presidential campaign is the only place now where the liquor question is causing any ferment.

Also, the present industrial and social changes have taken away from the woman, to a certain extent, her third function, that of taking care of the home. This is what has happened: minor domestic operations are being done by mechanical means, or by specialized extra-domestic labor; carpets are beaten, windows cleaned, floors polished, more and more of the home tasks are no longer a necessary part of woman's labor. Now, we have no doubt that the average housewife in this audience considers that she is kept all too busy in the home, but we say that this work that she does in the home is not absolutely necessary in her sphere of activity, and we contend further that in comparison with constructive work, in comparison with the contribution of women to literature, art and science, household duties by the women are an economic waste and unnecessary for the perpetuation of the home.

Furthermore, the supervision of a mother over the children has gone to a great extent. Children were formerly educated entirely in the home, but now they are taken away at an early age for day nurseries, kindergartens and grade schools where they are placed under the specialized expert training and care of the new age.

Thus, we see that woman has been deprived of two elemental functions, agricultural and industrial work, while the third of her functions, that of taking care of home and children, has been simplified to an ever-increasing extent.

What is more, we find that the fourth of her primary functions, that of perpetuating the race, has been steadily decreasing

in magnitude, as far as woman's share is concerned. It was formerly necessary to have very large families in order to furnish man-power for the work that was to be done; also a large number of children were necessary in order that a few might live to maturity. But now that specialized labor has replaced the necessity for bulky man-power and smaller families have become the rule instead of the exception, due to an increase in the knowledge of sanitation and of medical care, and due to decrease in famines and wars, as a result, small families have become an expedient thing in modern life.

Now, the gentlemen of the Affirmative may deplore the fact that the birthrate in the world at the present time is decreasing, but we should like to point out that the music critics tell us that saxaphone players are born and not made; and we contend, if this is true, that it conclusively proves that the decrease of the birth rate is a happy circumstance.

So we find, due to the fact that smaller families have become expedient, that after ten or fifteen years of married life, the woman finds herself alone in the home—her children gone, her constructive work taken away from her, nothing to do but bask in the idleness of luncheon clubs, or gossip over the back fence with Mrs. O'Riley.

Thus we say that woman's place in not necessarily in the home. We do not contradict the fact that woman has a real primary and essential function in the home, but say that it is not logical to claim that woman's sole place should be maintained in the home. Formerly, her contribution to the constructive labor of mankind was performed in the home. Now, three of the functions have been taken away from her and the fourth is steadily decreasing in magnitude.

So woman has readjusted herself to the new conditions and has re-assumed, by entering the industrial, professional and industrial world, her rightful heritage of constructive labor for the advancement and betterment of civilization.

SECOND AFFIRMATIVE

Norman C. L. Nelson, Sydney

Mr. Chairman, Ladies and Gentlemen: It is a long time since I heard a speaker make a more constructive argument for the Affirmative side in a debate than the last speaker for the

Negative. It seems to me that the whole trend of his argument was absolutely misapplied to the real meaning of the question.

This is a proposition that the emergence of woman from the home is a depressing feature of modern civilization. Whether it is a fact that women can do jobs outside of the home at the present time, whether they can do executive work, or not, does not matter, if we show that this emergence, this execution of public duties, has in fact had a depressing effect on our civilization. They may be, to a certain extent, entitled to emerge from the home, but if that emergence brings about an accompanying state of depression throughout the fields of the world vocations, and if that point is supported by us intelligently, then the first Negative speaker has in no way contributed to the argument in the debate.

One of the things he said was that, by reason of our seeing the co-eds on the Arizona campus, we would know that the co-eds had outstripped us. But my recollection, from seeing the co-eds on the campus—my reaction to comparing the corduroys of the men and the elegant dress of the co-eds—was that they had not actually outstripped the men, but had outstripped Dad.

The next thing he seemed to make a point of was the commingling of both sexes in the University of Arizona. While that might be so, from my experience in America I have found —and I have found this in private homes—that the women who are the best in the home are the women who have had a college education. A college education to a woman is just as essential as it is to a man. The Affirmative will admit that, but education, I say, for education's sake! You don't want an education merely to make yourself a specialist. The whole structure of the negative argument was supported by the fact that we have become specialists. Naturally, I think it is an admitted fact that the trouble with the world today is that we do specialize in our work, performing everything in a mechanical, automatic way. The old ideas are gone—some perhaps for good, but at least the old ideas of doing a thing for its worth, the idea of professional ethics, the idea of reading for reading's sake, the idea of being a scientist simply because you want to do some good, has gone with this avalanche of specialists.

And I say it is an argument for our side tonight to say that women have become specialists, for if they have, they are certain to destroy the most vital attitude of mankind toward them, and that is the chivalry of man toward woman. This new world, this Republic of America, has done more by its romantic institutions, by the heroic men who have kept it going, by the people who have struggled and labored mightily to make and maintain their homes, by the pioneers crossing the vast western plains and building new empires, by the spirit of chivalry manifested throughout the ages, than by all its specializing and industry and material progress. I think that when we look on these subjects we ought always to consider the sentiment and romance, for perhaps the world would be better off with those than with the commercial and mechanical ideas we have today.

And to my mind the emergence of woman from the home, because it is entirely contrary to what they should do, has absolutely been a depressing feature of this specialization. It is not necessary for woman to do things which are scientific and which are literary and professional, and neglect those which are essential to the home.

I think perhaps the greatest calling of woman in life is motherhood. Perhaps I am wrong—it is up to you to determine, but it is my idea, the idea that women for their own sakes should be in the home.

This affirmative side tonight does not wish to advance the proposition that woman's liberty should be curtailed. I am quite prepared to agree with the Negative that we should allow woman this real privilege, to have as much freedom as possible. But this is a very different thing from going out in the world and underselling a man. Let her have college education, let her have a liberal education in the arts, literature and sciences, but surely do not let her become an automatic machine. Which is better, to have a girl in a good, satisfactory home, or a girl standing up in a factory, turning a lever eight hours a day? How much has this liberty gained? Where are the bulk of the women today? Do the bulk of the women enjoy real independence? Just look at the factories of the world; the men in these factories are being supplanted by the women. And what are these factories doing physically and mentally to the women? You cannot expect a woman who has been working at these jobs, in these factories and stores, to go out and do

exactly the same thing as her mother would have done before her. Physically it is impossible, and the fact is that her charm is destroyed in exactly the same way, the same manner as her physical and mental powers are impaired.

The emergence of women from the home was contemporaneous, I think, to a large extent, with the Great War; and when the Great War was concluded, (and Lloyd George had made sufficient money), the women who had taken the place of men during the war-time seemed to wish to carry on these jobs which they had previously held, and it was their strong and firm resolution to keep on doing that very thing. And resolutions, like bad customs, never die. They seemed to adhere strictly to that idea, and this was the effect upon the nation of the women emerging from the homes: up in my country, several hundred thousands of men are out of employment, because they were forced out by the competition of women.

And the women lost the very thing which they should have most cherished in life, and this was veneration and chivalry. This is my answer to the argument on woman's work, to the argument that she was supplanted by men throughout the fields and the industries because of the development of civilization. Instead, this was the reason: because woman was no longer needed to do manual labor, or work behind the horses and plow the fields. Now, that has all been changed by the present industrial scheme.

This whole argument, that veneration for women was previously an integral phase of the country's industrial platform, is incorrect. Now, the idea has entirely disappeared and it has also this effect—that women have lost this veneration, this chivalry, by descending to the same plane exactly as the men. They have lost this effect by being modern and mannish, by competing with the men in industrial occupations.

Consequently the older generation of women is better than those of our generation. I think this is well illustrated by the story of the young lady in England, who went to visit her grandfather, and it was a Sunday afternoon and a very slow afternoon, and after she had been there a while her grandfather said, "My dear, would you like a cup of tea?" "No tea, thank you, Grandfather." The party was lagging awfully, and finally the old gentleman said, "Would you like a cup of coffee, my

dear?" "No coffee, thank you, Grandfather," she replied. Well, the party just got terribly slow, and he didn't know how to entertain her and so, reaching out for the bell, he said, "Would you like a whisky and soda, my dear?" and the young lady replied, "No soda, thank you, Grandfather."

That seems to exhibit the tendency of the modern young woman. It seems to illustrate also the tendency of the young married woman, who is not as substantial as her mother before her, simply in order to have a good time. With them, to my mind, independence is absolutely synonymous with a good time—that is the only aim of our young married women. To have an existence in this life is not a plaything, and a constant good time is not essential to a constructive life. It is not an easy thing to get along with. We have a public duty to uphold, and the first duty that any woman owes to the community is to hand down posterity. So I say that the calamity in France is because the birthrate is so low. And in France we find that one of the evils of industrialism is the emergence of women into occupational life. But I don't think that it is any argument on the Negative to maintain that a big decrease in the birthrate is any reason why women should go out into the outside world. Of course, like most university men, I am entirely self-educated, but I certainly cannot, for the life of me, see why that proposition was advanced by the Negative.

I say that this education which women have received has been consistently misapplied for the last decade. While I admitted, in the first part of my speech, that college education was good for a woman, it seems to me that a lot of people, and certain young men and women, are being over-educated. They seem to have gotten a veneer, which they assume entitles them to some new liberty. It seems to me that the old slogan of liberty, fraternity and equality has been supplanted by the new slogan of liberty, fraternity and sorority. College education is a good thing, but when it tends to make women oblivious to and superior to their duty, it is certainly a depressing feature of modern civilization. And in support of that I might mention an experience I had in my own city. I was once in an institution there and I happened to be given the opportunity to speak to one of these modern young women, and having nothing better to talk about, I thought I would say something about literature to her, and after some discussion I said, "How do you like

Kipling?" She replied, "Oh, I don't kipple." That seems to me to illustrate, to a certain extent, the frivolity which has accompanied the emergence of woman in a great many cases, and if this is so, if the new philosophy of woman is only to have a good time, exclusively to have a good time, then I would say she is not assuming her duty in life, and we are entitled to assume that this is a depressing feature of the emergence of woman.

It seems to me that economically the emergence of woman has the effect of undermining man's strength in the community. I think we must have a fixed industrial system and we must not have women taking the place of men in the field of labor; there must be no competition. If you wish to let them compete with men, you do it at your peril. No community can afford to have men out of employment, and as long as women consistently remain out in the world, doing work men were previously privileged to do, then I say you have a situation which is unnatural and, in the eyes of most people, certainly should be deplored.

SECOND NEGATIVE

Ivan Robinette, Arizona

Gentlemen of Sydney, Ladies and Gentlemen: The gentlemen of the opposition seemingly have made a great point of the theory that woman in industry causes unemployment. Before we proceed with the constructive argument of the negative case, let us look at the truth or falsity of this contention. Judging by the statistics of the relative employment of men and women in this and other countries, it would seem that men in this and other countries are not being supplanted very fast by women. There has always been unemployment in the United States, whether or not women were in the industrial field. And we see that today the Department of Labor says that unemployment in the United States, with relation to the population, is as low as it has been at any time in the history of the country. Thus it is shown as an economic fact that the exodus of woman from the home has not really displaced men from their employment. As a matter of fact, the way this

problem works out is that when a woman goes out into industry she brings additional money into the home—and here is the logical result, that the home spends more money and creates industry by increasing the demand for products, and that in turn creates an additional demand for labor. And as an example of how this works out, take the chewing gum industry, which is made profitable largely by sales-girls and stenographers.

Probably by this time a great many of you are of the opinion that this question, as to whether or not we shall tie women down in the home, is comparable with the college boys' views on the use of lip-stick—that it is purely a matter of taste! But we of the University of Arizona are convinced that woman is entitled to a place in the business world equally with man, if she so desires, as opposed to the doctrine laid down by our friends from Sydney,—that woman's place is at the sink.

My colleague has traced for you the development of womankind. He has shown that at one time practically all of the constructive work of the world was carried on by women. That the factory was in the home, the tilling of the fields, the caring for the home and the perpetuation of the race. It was at this time that this idea rose that "woman's place is in the home." At that period it was in the home, because it is obvious that if woman carried on all the tasks allotted to her, she didn't have such a whole lot of time to be elsewhere. But then, as my colleague has shown, conditions have changed—with these modern inventions, so much of the work has been removed from the modern home that, strictly speaking, woman is no longer a positive financial asset in the home; that if woman is to contribute and be of any material aid to the home financially, she must sally forth into the fields of industry. And this is just what has taken place today. The king may be in his counting house, counting out his money, but in all probability he's aided by a comptometer operator who gained her experience keeping the household budget. And the king will tell you that she is much more efficient for his purposes than that clumsy-fingered yokel whom he has transferred to the packing department.

Now, this path of woman in industrialism has not been rose-strewn, true. She had definite handicaps to overcome. When women resolved to fare forth and take their place among the men in the business world, they found the traditional clothing a

handicap—thereupon, they proceeded to remove that handicap.

We see that women are in industry today,—ten million of them. Are they in industry for pleasure, principally? Purely for the sake of working? Are women that industrious? Have ten million women gone to work just for the love of working? As a matter of fact, these ten million women are in industry today because the very happiness and well-being of the homes from which they have come depend in a large measure upon these women being in industry.

There are ten million women in industry today—and eight million of these are unmarried. Let us first consider the eight million unmarried women who are engaged in industrial pursuits. It used to be that those girls could stay in their paternal homes forever, and in no way hurt the finances of such homes. They paid for their keep by doing the work in the home, they could stage the milkmaid act, they could bake the bread, do the cooking and darn the hose, tend to the babies and put them to bed, and so forth. But under the present scheme of things, these unmarried girls, who comprise four-fifths of the women in industry today, must either stay in the home and be supported or get a position and support themselves. You have two alternatives,—this modern woman must either work and be financially independent, or she may stay in the home and depend upon some one else for support.

It is a well-founded principle of society that the young married son should, if his parents are in need of it, tender them financial aid. It is a good idea, nothing wrong with it. But what of the parents whose sons are all daughters? They have worked just as hard to rear the girls and have spent the best years of their life for their benefit. Just in a spirit of fairness, is it doing the right thing to close the doors of industry to these women, to deny the right to help their parents out, to refuse them the opportunity of repaying the parents who have done so much in their behalf, for their sacrifices for them?

And then, let us consider that other class of women in industry—the two million married women. They have emerged from the home and taken up industrial pursuits for one reason, and one reason only, and that is to improve the standards of the home, to make a happy home possible, and thus fulfil their natural function. They have entered the lists of industry in the

interests of the home, because economic necessity has forced them to do it.

Think of the homes in which the wives aren't ever satisfied with what their husbands can provide for them,—always wanting something more. You know, lots of women are like that—ever since the time of Helen of Troy, women have wanted clothes from Paris! But as a matter of fact, with this class of women, forever nagging in the home, wouldn't it be a better thing to allow that nagging wife to go forth into industry and see how hard it is to earn a little money and, incidentally, provide herself with some of the better things of life, which all women covet?

And then think of the homes where the women live whose children have grown up and gone out into the world. Shall we deny this host of women, or the world, the economic benefits to be derived from their constructive work in industry? Shall you keep them in an empty home or allow them to go out and earn money? A woman is no longer old at forty. Of the women of New York City who have reached the pinnacle of financial success, who have become millionaires, 90 per cent of them started out in business after they were forty.

So it doesn't seem right, from the standpoint of society, to deny civilization the right to the constructive work and the economic value of that host of women.

Too, we must consider those women who are widows, having no means of individual support, in many cases having families dependent upon them. It is all well and good to say that they should stay in the home, but we ask you, should you have a more happy state of affairs if these women stayed in the home and placed themselves and their children upon the tender mercies of charity, or if they went out into industry to provide for themselves and their brood?

And then half of the women who have gone into industry have done so to help that home out, to supplement their husbands' earnings, wives of husbands who do the very best they can, but who can't seem to put their work on a paying basis. You may talk about mother love all you want to, but is it in anywise decreased or lessened by woman making that great sacrifice for the final benefit of her children? All the mother love in the world won't give little Mary music lessons, or buy

a needed tonsil operation for little Johnny. You have to think of these problems in terms of dollars and cents.

Then consider those wives who support their sick husbands, who have taken that sacred marriage vow and gone into the marriage proposition "for better or for worse, in sickness and in health." In Tucson today we have a great many homes where the wives go forth into industry because they want to help their sick mates out, because they don't want to break that holy vow and desert their mates in distress, and so they do that thing which any normal woman would do under the circumstances,—get a position to help that mate regain his strength and to keep the home together.

As a further object for your consideration, let us consider many young married couples of today. It often happens that a young married couple just can't afford everything they would like to have. So when the question comes up as to whether they shall have a radio or a baby—only one, for they cannot afford both, as the husband's earnings are insufficient—the result is in many cases that they choose a radio, on the theory that they can shut the thing off when it gets noisy. But if the wife is allowed to supplement her husband's earnings for a few years, they can afford a home and a family and really enjoy a state of true marital bliss.

Now, as a matter of fact, these gentlemen from Sydney would have you close the doors of industry to women. They would have you do this, in the face of all the homes that have been preserved, the children that have been educated, the wives who have supported themselves,—they would have you, in the face of all these positive benefits, close the doors of industry to women. We ask you, shall we do their bidding?

They talk about a woman's sphere,
As though it had a limit.
There's not a place on earth or heaven,
There's not a task to mankind given,
There's not a blessing or a woe,
There's not a whispered "Yes" or "No,"
There's not a life, or death, or birth,
That has a feather's weight or worth,
Without a woman in it!

THIRD AFFIRMATIVE

W. S. Sheldon, Sydney

MR. CHAIRMAN, LADIES AND GENTLEMEN: I should like to say how pleased I feel tonight to be speaking in the most attractive and progressive university of the United States, and inasmuch as this is the fifth of the universities at which we have been scheduled to speak, you will probably understand that this is the fifth time that I have been pleased to speak at the most attractive and progressive university of the United States.

Mr. Rose, I think, made a very alarming statement. For instance, he said that the presidential campaign was the only place where liquor was causing any ferment. Of course, I am only a stranger in America, but from the homes I have visited in America, I should say that the presidential campaign is not the only place where liquor was caused to ferment. As far as I can see, as regards the matter of drinking in America, it is something like the remark that while, prior to the introduction of prohibition they still had a little whisky in their home, nowadays they have a little whisky still.

Then Mr. Rose went on to laud the intellectual contributions made by woman to the arts and sciences, and he spoke of the advantages of the women being out of the home, and of the women artists and novelists. Well, I haven't much time for the women novelists myself, and the only excuse I can see for either women artists or novelists is that women seem to have a natural aptitude to draw pictures,—they make up so skilfully. But in any case, if you disagree with me and if you think the woman novelist has been of a great benefit to the world, I will ask you to remember that this is one of the things a woman can carry on in her own home.

And then Mr. Robinette's statistics, which he cited to refute what Mr. Nelson said. The object of having figures in a debate is that they always prove that what was said by their side is always exactly right, and what the other side said is exactly wrong. Of course, I know that figures never lie, but liars sometimes figure.

Mr. Robinette also praised women emerging from the home to save their sick husbands and to preserve the sacred bond of matrimony. I congratulate those women, but of course they are

exceedingly few, and statistics show that the majority of women who emerge from the home and who have married haven't so very much regard for the sacred bond of matrimony at all. The increase in the number of divorces shows this very plainly, and the increase in divorce has grown with the emergence of women into business and factory life. The fact is that women have thrown off all shackles when they emerge from their homes, and in so doing they have become noticeably freer in their morals, and when they marry they do so with the intention of seeking a divorce when it suits their fancy.

It has been stated, as a matter of fact, that when the modern woman is about to marry, she no longer needs a trousseau—she only needs three things, a wedding dress, a going-away costume and a divorce suit.

Mr. Robinette grew rather tremulous about the discarding of the traditional clothing of women, but to praise them for that alteration seems to me to be the most natural thing in the world, because as regards modern dress, women seem to be doing the same thing as they say she has been doing in industry, making ends meet.

In the emergence of woman from the home, she has lost a great many of the charms and graces that once made the world a happier place to live in. I submit that the new woman is not a very desirable feature of modern life, and this is shown, I think, in many ways. In the first place, I am going to say very candidly that the modern woman is far less beautiful than her grandmother was—to be perfectly candid, she paints too much. I am willing to admit that there might possibly be an occasion for a slight use of carmine or scarlet. We see these brilliant colors in nature, and I will admit that there are many beautiful shades of scarlet, but I don't think that it makes any woman more beautiful to be all painted up like a particularly hectic sunset, and I am going to protest, on behalf of my sex. Of course, with the use of paint, it doesn't matter whether a woman is beautiful or not. The old saying is that beauty was only skin deep, but I say, when I remember the array of cosmetics that adorns a woman's dressing table, I should say that the trouble with modern beauty is that it is not skin deep.

The modern woman has become less attractive because less beautiful; she has become less attractive bcause she is less

feminine. She has lost her charm and beauty along with her crowning glory. The shingle has done for woman exactly what it did for Samson—it has weakened her. There is no doubt about it, that the thing which attracts man in woman has been the difference between them, some subtle difference which I will not attempt to define but which, for lack of a better word, we will call femininity. The modern woman is trying to bridge that chasm which exists between men and women and the result is disastrous. It is an extremely difficult thing for a man to fall in love with a woman who looks the same, talks the same, dresses the same, smokes the same, drinks the same and works the same as he does. Now, in attempting to become all the more masculine—and you know all the things woman has done in that direction—woman has become less attractive, and in that way has taken the romance out of life.

My two opponents spent a lot of time in going into ecstatic praise of the women going into business. Now, the average woman going into business becomes a typewriter and she does not, I submit, become a good type. I submit, we see in the papers of the lowest type cartoons of the sort of business men who take their typists on their knees, and that sort of thing. Now, I don't subscribe to that sort of thing, and I don't think that business men, nine out of ten, indulge in it either. But where I object to woman going into business is simply this—that this emergence of women into the business world is a curse to women and to men both. Now, the feminine influence is the greatest thing a man can have in his life, but he can have too much of it. It is a notorious fact that the unhappiest married life is where the husband is around the house all day and, on the contrary, the happiest married life, the lives of perfect connubial bliss, are lives in which the man and woman are separated for a large share of the time. The moral to be drawn from this is this—that while the feminine influence and interest is the greatest thing in man's life, if it is to be supplied all day, he gets sick of it, and by the introduction of women into the business world man is given an everlasting dose of femininity all day, so that when he goes home at night he is in an unhappy position and will not be able to spend as much time with his wife as he otherwise could do, for he has already had too much woman around him all day.

Then there is the new type of woman, going on a jury. I don't know whether having women on a jury is practiced in this country or not. It is not in our country, fortunately, but it is in England. But I submit that the introduction of woman into jury service is a very disastrous thing, because when you remember what the duties of a jury are, that the jury are supposed to sit down and exercise their reason and say nothing, I think you will agree with me that women are not much good at that sort of thing. A woman is essentially a creature of her emotions, and the vital requisite of jurymen is their reason. Women act from their hearts—the jury must act from their heads, and a woman who goes into the jury is entering a sphere for which she is not therefore suited.

As Lady Godiva said, at the end of her ride, "I am now drawing near my clothes," I will conclude by saying that in trying to keep women out of the professions, out of industry and out of business, it is not because we want all these for ourselves. We are not trying to keep her out because we want to monopolize these things for ourselves, but we are trying to keep her out because we believe that she is too good for the wearisome noise and fever and fret of it all. We don't want to have her besmirched, to lose her charm, by contact with the business world. It isn't that we want to monopolize it. Sir Walter Raleigh, when he laid his coat in the mud, so that Queen Elizabeth could walk across the muddy spot without soiling her shoes, didn't do it because he wanted to monopolize the mud. And when we consider the world of industry and of business our rightful place and ask women to stay out of it, we don't do it because we want to monopolize the mud,—not at all.

It has been said, I know, by a number of modern women, that the change has not been in women but that it has been in the men. I want to give that statement a categorical denial. The man is the same as ever. He is the same chivalrous and courteous man in 1928 as he was in the Middle Ages, and although we don't ride around in crusades and wear marvelous collars and tin pots and all that sort of thing, fundamentally we are just the same. In the Middle Ages, a man would draw his sword to protect the credit of his wife, and that was chivalry, and isn't it the same thing in the man of today, when he draws a check to protect his credit from his wife? And so I want to make that point perfectly clear, that if women will only come back to

where they were, they will find that men are the same as they always were.

THIRD NEGATIVE

Charles Reed, Arizona

Mr. Chairman, Ladies and Gentlemen: Before I close the constructive argument for the Negative this evening on this very interesting question, I want to reiterate the welcome which has been extended to the gentlemen from Australia, and we hope that their stay in this land of the Southwest, where men are men and women have discarded hosiery, will be very pleasant. We are indeed glad that our friends from Sydney have been finding their visit to Arizona pleasant, that they have been favorably impressed with this land of ours and see in it many advantages not available elsewhere. They have made us realize what we are so prone to forget, that after all this is a land of promise—especially so near election time.

Now, in turning to some of the arguments advanced by the gentlemen of the opposition, I am forced to point out that some of them have been just a bit unduly exaggerated. Of course, this is probably only natural, in view of the fact that they have just spent the last week in California.

We feel that many of the fears entertained by our friends across the platform are exaggerated. We make haste to assure them that there is but little likelihood that women will invade and will overrun every field now occupied by men. For example, there seems to us little danger that the policemen or detectives will suffer from any such competition, for what woman is there who would want to be known as a "plain clothes woman"?

And we cannot find ourselves accepting their belief as to the deplorable effect that women will have on politics, or of their exodus into pursuits formerly the exclusive property of men. It seems pretty obvious to us that if they entered into politics, there would in all probability be one good thing come of it, for if they entered the diplomatic fields it would certainly put an end to this objectionable secret diplomacy we hear so much about.

But aside from that, and in considering and analyzing the entire argument of the gentlemen of the opposition, it would seem that their case reduces itself to the proposition that the

modern tendency of the world toward specialization and the abandonment of age-old ideas, institutions and methods, carrying along with it the modern tendency of women to emerge from the home, has been most depressing.

In the first place, it seems that they have slightly misapprehended the question which the subject under discussion raises. We are not arguing whether or not the present trend toward specialization, and whether or not the reorganization now being undergone by many of our institutions, is a good or a bad thing. Our argument is confined to the emergence of women from the home. Whether or not we agree with changes which our opponents so ably denounce, it is clear that they are with us and will continue to be with us whether or not we, by our discussion here tonight, put an end to the emergence of women from the home or decide that it will be all right to let them continue. We believe, in view of these admitted changes, that the emergence of women from the home is only logical, and is the only logical, sensible, reasonable and beneficial course to be taken. Now, if we could move back the hands of time and disregard entirely conditions now existing, we might find ourselves in sympathy with the drepressing attitude taken by our friends and opponents, but as that is not possible we must insist upon their realizing that we are obliged to justify the emergence of women from the home in view only of present day conditions and not in view of some scheme of existence which they consider ideal.

And now, considering the changes which the gentlemen of the Affirmative deplore, but which are, however, too real to be disregarded, it becomes most apparent that no other course is open for woman today. For instance, we have pointed out that whereas women were once the exclusive tillers of the soil, and worked in the fields, about the only thing remaining for her to do in that respect is to raise cain, an occupation at which she is still very proficient.

And we also have pointed out that with the advent of present day specialization, more and more of the work of rearing and education of children is being taken away from the average mother. We have likewise shown that much of the housework she formerly did is now done by experts, and we have pointed out these changes as establishing the fact that the modern

woman must turn to fields of endeavor outside of the home and that she is justified in doing so.

We find that the gentlemen of the opposition do not agree with us in regard to the effect of this emergence of women upon the family. They say that the homes are being wrecked thereby. But we insist that if the woman of today chooses to send her clothes to the laundry, buy her bread from the bakery, have her house cleaned by specialists and let qualified experts educate her children, we maintain that she is not wrecking her home by so doing. It is, to me, an unthinkable proposition that the performance of menial household tasks requires the loving touch of wife and mother, and likewise that the modern woman, in electing to go into the outside world and make a substantial contribution to the income of the family, is thereby wrecking that home is a thing I cannot believe.

Since our opponents express themselves so greatly alarmed over the future of the homes, it might be a good thing for us to inquire more deeply into the effect the emergence of women is having and can be reasonably expected to have upon that institution.

They have been especially depressed in considering marriage and divorce as problems of the home, so let us view those two problems in the light of the present emergence of women from the home. Now, before woman was afforded the opportunity of engaging in outside occupations, her vocation and her only vocation was marriage. That was the only field that was open to her, and her means of support and her social position depended upon her getting herself successfully married. She was forced, not from choice but from necessity, to adopt the motto of the Northwest Mounted, "Get your man." The evils of selecting a life-mate on such a basis of absolute necessity are too apparent to admit of argument, and manifestly, the chances of a satisfactory marriage are greatly lessened when the elements of free choice, mutual preference and desire have to give way to the mercenary elements of necessity.

But with the opening of new fields of endeavor, woman has been given an opportunity to become independent of man and marriage as means of livelihood, and more and more she is refusing to view matrimony as a profession. By affording woman the opportunity of financial independence, by freeing her from the economic need of marriage, we may expect to secure

and we are securing more truly satisfactory marriages, based upon higher and more lasting considerations.

And we wish to point out that the benefits to the family do not stop with the effect on marriage, but extend to the continuation of that union on a more satisfactory basis. For, so long as woman's place was irrevocably in the home not only did she have to choose her husband with the main idea of the economic aspect, but she was, after marriage, placed in a state of financial dependence upon him. We hold that it is practically impossible to create a satisfactory adult relationship under such a condition, for financial control and domination lead inevitably to control and domination in other respects. We cannot expect to find true happiness builded on a foundation of inequality, for mutual responsibility, mutual contribution and mutual respect are as essential to a satisfactory marriage relationship as to any other.

But, as we have pointed out, the changes which have taken place make it no longer possible for the wife to contribute an equal share by remaining at home, and only by seeking outside fields of endeavor can she be in the truest sense of the word a partner to her husband. The modern woman, by emerging from the home and engaging in outside occupations, is availing herself of the only means of making contributions to the family which equal in importance those of her husband. We find that the continuation of marriage, due to the placing of women on an equality with men, is rapidly becoming dependent only upon the compatability of the parties to it. Women are no longer forced to endure unhappy or degrading unions merely because of financial dependence or stifling social viewpoints. Nowadays marriage is coming to be regarded for what it truly is, and that is a social institution for our general betterment,—an institution which should be terminated when it defeats its own purposes, and not something of divine creation. Too many are still insisting that marriages are made in heaven, when it is only too apparent that many of them are lived in hell.

True, the tendency has been to increase divorce in the beginning, but there are evils involved in any adjustment. However, in the long run, I am sure that by establishing marriage on a more satisfactory basis we may reasonably expect a substantial decrease in divorce.

I am unable to contain the surprise I feel that Mr. Godsall, in introducing the constructive argument for the Affirmative,

made known that they were arguing because of their interests in woman's concerns and deplored her emergence from the home because they felt that it was against her best interests. I cannot feel that the idea of the right and opportunity of self-expression had occurred to Mr. Godsall when he so prefaced the very able arguments advanced by the Affirmative. I wonder if he realized that, however many fields of endeavor might be open to men, until the emergence which he so deplores began it was decreed that when woman married—regardless of her individual inclinations or talents or disposition or qualification—henceforth her only field was to be the home? When the average man gets married he doesn't expect to stay home and paint the house, trim the lawn and hedge, or fire the furnace. He expects to perform the sort of work which he considers as best suited to his particular abilities, interests and inclinations, the work for which he feels himself best fitted. He expects to go out and do that which his inclinations urge him to do. But when a woman marries, our opponents desire that she shall be automatically limited to the field of home life. She must become a mother, whether she feels herself competent or not. Now, women vary as greatly in their individual inclinations and capacities as men do. All women are no more good housekeepers than all men are good house painters, and certainly it is an illogical scheme which says women may have only one field and men have many. Certainly, in making a good cook we may be ruining a good secretary, school-teacher or business executive. Outside of that, lots of women are poor cooks, and when I say it is a bad thing to force her to cook, I am thinking no more of the rights of women than I am of the ruined digestive systems of many of our husbands.

I maintain that the only sanction which such a manifestly unfair division of rights and opportunities can have is that the preservation of the home is more important than the individual rights of woman. But we have seen that the preservation of the home is no longer dependent on the continuous presence of women and on their efforts, and therefore the last excuse for the shameful denial to woman of the right to do that which she most desires and is best fitted to do is being eliminated. In the past their minds, their emotions, their creative impulses have often been more savagely distorted than the feet of Chinese women were distorted by custom-decreed bandages. By

discrediting the outgrown tradition which demands that woman's place is in the home, regardless of all costs, we are evidencing real advancement, and by seizing the opportunity for self-expression and self-determination, modern woman is proving her abilities and is fast removing prejudices as to her supposed inferiority.

And finally, by contributing her ideals and her viewpoints, by raising the financial status of the family and thereby raising the standard of life, she is contributing to an advancement that has, in times past, been so long man-controlled as to be one-sided, and she is thus proving herself a decided asset in bringing about a more uniform and balanced progress and advancement of humanity. This raising of the standards of life has had far from a depressing effect upon modern life. On the contrary, it has been most elevating.

I see that my time is up, but I want to leave with you the thought that the emergence of woman from the home, in giving her an opportunity to develop in all respects, is making of the woman of today a better mother, a more satisfying object of love, and a more useful member of society.

DR. SHANTZ: Mr. Godsall will give the rebuttal for the Affirmative.

AFFIRMATIVE REBUTTAL

H. G. Godsall, Sydney

MR. CHAIRMAN, LADIES AND GENTLEMEN: Like the boxer, I hold that it is nobler to give than to receive. So I take this opportunity with pleasure of answering the verbal attacks of my friends. I think it will appear that out of the welter of argument there have emerged three fundamental issues and three fundamental misunderstandings. The three fatal misunderstandings on the part of our friends are these,—first of all, the first speaker and then the second charged us with saying that we would deny women equal rights with men.

Now it is not a question of equality tonight at all. We do not say whether a woman is better or worse than a man. We simply say that she is different. She may be better, but it is certainly better for her to keep different, and it is an absurdity on her part to try and give effect to the weird doctrine that a miss is as good as a male.

An Englishman hit it off recently when he spoke of the service of women on juries, and he deprecated the movement as a misguided attempt by the women themselves on the question of equality. He asked what virtue there was about the position of a hang-man that could attract women, because, logically, if they are to assume some of the functions of the men, they ought to assume them all. We have heard of "Jack Ketch, the hang-man," but I ask you now, could you, any of you, imagine a more horrible situation than that of "Jennie Ketch, the hang-woman"?

And I think the misunderstanding evidenced by our friends tonight is one that is common to the sex they are defending, because women have misunderstood their position. They think it is a question of equality and they are descending from the pedestal on which they have been put in the past, to prove themselves the equals of men. I wish to state that the old type of woman who stayed at home, who reared her family and cooked and sewed, and kept in her place, that the woman who did this was much more the true and proper type of woman. I say it is truer still that the old type of woman has been the incentive, the inspiration, for every great work of art, for all the things we most cherish,—that all noble works have been inspired by woman. We have applied to woman in olden times epithets which I think ought to bring a glow to her heart. Men throughout the ages have referred to woman as the light of their life. I ask you now, how could anybody refer to woman nowadays as the light of his life, when she goes out so often? I think that the erroneous conception, which is acceptable in society today, that the woman is the equal of man, is responsible for the unrest on the part of woman.

The second misunderstanding which has characterized our friends' utterances, is that the industry of today is intelligent and that the industry of the olden times was in the same condition. It is true that the industry of the olden times was very intelligent, and woman, in carrying out those pursuits, was doing intelligent work. But the industry of today is not intelligent—it is most unintelligent. It is mechanical—it is automatic. An important person lately said that woman's mental life is now negligible. It is quite true that she did at one time have full opportunity to develop her mental life, by following the bent of her intellect, but how is her mentality exercised now by turning a screw a fraction of an inch, or by having her foot on

a lever, or by becoming occupied in similar industrial pursuits?

A lot of women, in the earlier times, were engaged in carrying on the various industries in their homes, but the whole gist of the matter is that when they were employed in these occupations they were domestic acts, and the woman, in following them, was following an occupation which we would not attempt to deny her—which we would like to see her following today.

But the industry of today is only crowding woman into the factories and into mechanical pursuits, which places her in a situation which is absolutely and utterly undefendable. She has thrown away all her chances for the chivalry and consideration she used to have from men, by going out and taking their work away from them, by putting herself on an equal footing with them, and this is a crime on the part of women, which we condemn.

And this misunderstanding on the part of our friends, one which is utterly untenable, is that they seem to hold it a great virtue that woman has been in the past gradually deprived of these former occupations in agriculture and industry.

I think this argument of theirs is right to our hands, that it is to our advantage, because it is an admission that this transition has been one of serious decline from intelligence to unintelligence. My good friend on the opposite side tells you and tells me that this was a process of specialization. I tell you it is not a process of specialization. It is a process of stultification, and the principle is well stated by the contention of your friend, Henry Ford, the latter-day Colossus of "Roads." Mr. Ford states, in his book, that the process of work in his factory is mechanical. He cited the instance of the man who had a job in his factory, and that job was to press a button twelve hundred times an hour in the process of the day. He admitted that this was an utterly soul-destroying labor. He said, first of all, "Has a man got a soul today?" and secondly, he said, "The laborer ought to thank his beneficent employer for giving him such labor, because it saves him the agony of thinking." That is the work our friends are asking you to give to women. It is unintelligent work, which is leading folks up from the status of a thinking being to that of a machine.

And the third misunderstanding which they have been laboring under is this, that because of the progress of inventions and mechanical devices, of schools and bakeshops, it is no longer necessary for women to be in the home. I think the facts put

forward by them to prove their contention, that is, that it is no longer necessary to have the children educated in the home, on the contrary bear me out in mine and those put forward by my friends here this evening, that this modern life and emancipation of woman from the home, through the progress of civilization, is exactly what I might call a smack in the face of human nature. It is a regrettable fact that the modern school is only releasing the women from their fundamental responsibility, so that children are no longer tied to their mother's apron strings. But the way I see it, I hold that it would be infinitely better for the children and the women themselves, if the children were rather more tied to their mother's apron strings. I say that it is human nature for children to be closely dependent on their mothers.

The attempt to bring in the theory that this is the better idea for the education of children is, besides, utterly abominable and has no connection with the question under discussion.

I think the fact is that the statement given us by our friend on the negative side is true, namely, that the modern woman, in asking herself whether she would prefer a baby or a radio, decides too often that she would prefer the radio. I think that it puts the position as clearly as it can be put, that the effect on the modern women of this emancipation of hers has but dehumanized her. Could there be anything more significant of complete un-humanity than that? It has been said, with regard to the craze of women for lap-dogs, that the heart that is fit for a canine will never be fit for the cradle; but I say to you that the heart that is fit for the radio is not even fit for a canine. There is a touch of the near-human about dogs, I have to grant that.

On the ground, then, of these three misunderstandings on the part of our opponents, I ask you, therefore, to line out most of the arguments urged against us by them tonight, as they have been predicated on an erroneous conception of what it is all about.

NEGATIVE REBUTTAL

Ivan Robinette, Wabash

Mr. Chairman: As the gentlemen from Sydney were presenting their constructive case, I was just wondering what

kind of a place this world would be if you closed the doors of industry to women, removed all women from industry,—just what would happen. It is my conclusion that you would have to resort to the methods used by the theaters of the sixteenth century, where women's parts were played by knobby-kneed boys. You would have to substitute Rin Tin Tin for Clara Bow. No longer could Ziegfield produce skits glorifying the "American Girl"—he wouldn't have the material available and so he would have to content himself with producing something like "Ten Nights in a Bar Room." And I was wondering what would be the fate of France today, if Joan of Arc had been in the kitchen, knitting socks for some Frenchman. The Goddess of Liberty is a woman—the exemplification of independence of women, represented by a woman. We have that here in America, but when woman tries to take advantage of some of that liberty, which we gave her, the gentlemen of the opposition say that it is a depressing feature. In considering what women have done for the home, as our friends tell us, they have done a whole lot, we will admit, but we contend that we should not forget one woman who has done much to make happier and better homes,—the woman on the American dollar. And we have shown you that she is attainable in many cases, only by woman going out in quest of her.

The gentlemen of the opposition have told us that the emergence of woman has had a horrible effect upon the health of the human race, but inasmuch as longevity has increased 15 per cent in the last generation, we hardly believe it is possible.

And then our friend has told us the modern girl is not nearly as goodlooking as her grandmother, and we are wondering one thing,—if he saw them together, how could he tell them apart? And, too, he has pointed out that chivalry is decreasing, that men no longer act like Sir Walter Raleigh. They don't need to, with the present-day paved streets and sidewalks.

Our Australian friends tell us that woman is being turned into a machine; if such be the case, this must be the "mechanical perfection" we hear so much about.

But in all seriousness, few will deny that married life is most serious, so let us consider the causes seriously. The case of the opposition reminds me of a saxaphone player, who said he was the most wonderful saxaphone player in the world, and when he was asked to prove it, he said, "I don't have to prove it; I admit it!"

Now, the gentlemen of the opposition have ventured the statement that the emergence of women from the home has a depressing effect upon modern life and the modern home. This is an assertion that takes a whole lot of proving. With respect to this argument this evening, we of the University of Arizona are in complete accord with the gentlemen of Sydney, in this one respect, and that is that we honor and respect the American home and are opposed to any movement that would disrupt the home. But we justify and approve of the emergence of woman from the home upon economic and social reasons, and we have contended that the best interests of the home itself are served by women going out into the industrial world.

You have heard the contention that woman's emergence from the home has a depressing effect upon industry, that it is one of the principal causes of unemployment and low wages. As a matter of fact, wages are as high now as at any other time in the history of the country. Do the gentlemen of the opposition favor the wage scale that existed in grandfather's time? Women didn't go out into commercial enterprises then, but they worked out in the home and the college professors got about sixty-five dollars a month. At that time, sixty dollars a month was considered good pay for a man with a family.

If women in industry were truly responsible for low wages and unemployment, it would seem that conditions in other countries, where women remained in the home, would be very satisfactory. But consider the conditions in Turkey, where woman's graces are confined to the harem; consider the economic conditions in China, where woman's rights are measured by the length of her foot; consider our sister nation Mexico, where a man works all day for the price of a pack of cigarettes. In view of the conditions existing in these countries where women are in darkness, and in view of the highly satisfactory conditions existing in England and the United States, we say that from a practical standpoint our friends are not justified in contending that women in industry have a depressing effect upon industry.

The gentlemen of the opposition tell us that the exodus of woman from the home is responsible for the divorce evil. They assume for their major premise that divorces are an evil. It is very questionable whether this assumption is well-founded, but

let us assume, just for the sake of argument, that the gentlemen from Sydney are correct in their views on divorce. But are divorces limited merely to working women? Is not the tendency to increased divorce the same among all classes of women? It is a matter of fact that divorces are most prevalent among the idle women of the upper classes. It's just the idea that Satan finds something for idle hands to do. The old-fashioned woman was too busy with her household duties to have much time to consider divorce—she didn't have much time to be psycho-analyzed to see if her husband was her true soul-mate or if she was harboring suppressed desires. It's the modern woman, who has few household duties, with little occupation for her time, that seeks to sever the marital bonds.

Then, too, women are coming to realize that they are no longer to be regarded as chattels, who must be subservient to the every whim of their lord and master, their husband.

However, one of the major reasons for divorce is economic difficulties. They tell you that love flies out of the window when the wolf comes in at the door. So it is manifest that, in many instances, rather than causing divorces, women in business and in the industrial world help the home financially, and thus prevent much unhappiness and discord.

Then, as to this question of racial suicide. It is admitted that there has been a decrease in the birth rate in the last few decades, but has it been established that this decrease is caused by women in industry? Of the forty million married women in the United States, only two million are in industry—it is reasonable that these two million working women should be held responsible for the great general decrease in the birth rate? The general tendency of modern times, it is true, is to bring fewer children into the world, but then, it isn't necessary to bring so many children into the world now, in order to carry on the perpetuation of the race, for modern science has brought about a wonderful decrease in infant mortality. It isn't necessary any longer for a woman to have ten children in order to raise five to maturity. In our constructive case, we endeavored to point out that, because of economic factors, larger families were made possible by the women wage-earners.

They have pointed out the decrease in the number of marriages. True, it has decreased those unhappy marriages, because industry has given the modern woman financial indepen-

dence. Present day marriages are based on the consideration of love and affection, and woman no longer marries for a meal ticket, and it must be admitted that this, in the long run, will result in happier and better homes.

These gentlemen from Australia will tell you that the husband no longer has his former respect for his wife, because of her emergence into the industrial world, but if you will look at it from the standpoint that the wife is no longer to be regarded merely as a chattel of her husband, then perhaps that husband will strive a little harder to show her love and respect. Our opponents admit that education is a good thing for woman, but wish to deny to her the opportunity to use that education for a happier home condition.

In conclusion, let us review for you the case of the Negative. We have shown you the changes that have taken place in the home; that the performance of menial tasks by a wife is no longer imperative, if she values her time at more than three cents an hour,—the price of electricity to do the work that woman should not be called upon to perform. Specialization has made such work unnecessary. We have pointed out that the exodus of woman from the home has been beneficial to the children, that because of the increased financial contributions they are afforded better opportunities for education and for advancement, that they are given a more enlightened and contented mother and a more satisfactory life in the home. We have shown you that the family has been made more economically sound and that marriages have been placed on a firmer basis. We have shown where love and preference are the moving forces and not the woman's dependence and necessity; we have shown that women in industry have brought about an equal contribution, a mutual respect and a real partnership between husband and wife. We have shown that women, by going out into industry, have benefited themselves and have gained financial independence, that they have been given the opportunity to take advantage of new methods of home management, that the necessity for mercenary marriages has been removed, and that women have been given the opportunity for self-expression and that they are enabled to do that which they are best fitted to do. And lastly, we have shown that civilization and the world at large have been benefited; that the standards of living have been raised, and that the world has been given the advantage of the constructive efforts of womankind.

And so in conclusion we say, remove, if you would, every vestige of woman from industry; deny to womankind that freedom for which she pleads; consign her, if you would, to a place in the dark ages,—and what have you done? You haven't added one iota to the benefit or well-being of society; you have merely heaped injustice on those you seek to benefit! Therefore, in the light of these facts, we of the University of Arizona feel justified in saying that the emergence of woman from the home does not have a depressing effect upon modern life.

AFFIRMATIVE REJOINDER

H. G. Godsall, Sydney

Mr. Chairman, Ladies and Gentlemen: I feel very guilty at having to address you for the third time this evening. I have never had to do it before, but I am told that there must be a first time for everything.

I am certain that with you, as it is with me, it is horrible to contrast Rin Tin Tin with Clara Bow, but I think it is quite on the cards that if the emancipation of women proceeds as it has, that Rin Tin Tin will be displaced by Clara Bow, because there is no doubt that she can "put on the dog," and I am sure that in emergency she could be "catty."

Too, I think that my friend's rebuttal has no reference whatever to my three fundamental misunderstandings, which I charged him with a few minutes ago.

I claim that the emergence of women has given them a mechanical nature, and that the woman in industry today is a smack right in the face of democracy, and that the conditions which are being brought about by this emergence are unnatural and much to be deplored.

However, I will have to modify one of my statements a bit, wherein I said that the modern girl is not nearly as goodlooking as her grandmother. I don't know that I should have gone as far as that, but I will say this, that work outside of the home is certainly not to her advantage, but it is rather to her disadvantage. But, for instance, I will say that she is admittedly better off than her grandmother, as she has much in view! But I do say this, that she has removed herself from the

fundamental position of womanhood; she is not as fine a woman as her grandmother was.

I will conclude, then, by saying that we are dealing, in this case, with one of the greatest problems there is in the world—the difference between the sexes. This has been fully covered in my earlier remarks, and I think you will come to realize that what has been said by our side on this matter is the truth, in the end.

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CHAPTER IV

INSTALLMENT BUYING

WHEATON COLLEGE

versus

MARQUETTE UNIVERSITY

RESOLVED: *That the practice of installment buying be drastically curtailed.*

This is a stenographic report of a debate between two women's teams, the Affirmative representing Wheaton College of Wheaton, Illinois, and the Negative representing Marquette University of Milwaukee, Wisconsin, which took place at Milwaukee on February 14, 1929. The Critic Judge was Mr. Leroy Laase, Debate Coach of Northwestern University, who gave the decision for Marquette University. This report of the debate, with the briefs and a larger part of the bibliography, was furnished thru the courtesy of Professor William R. Duffey, Director of the School of Speech, Marquette University.

BRIEF

INSTALLMENT BUYING

AFFIRMATIVE

INTRODUCTION:

A. The attention of the business world is focused today on installment buying.

B. It has had a rapid growth.
   1. It began in France before the Revolution.
   2. It was begun in New York in 1807, by Cowperthwait & Sons, furniture dealers.
   3. It has spread until now almost any article may be purchased on the installment plan.

C. By installment buying is meant
   1. The purchase of an article in which the price is paid in fixed portions at stated intervals.

D. By "drastically curtailed" is meant
   1. It should be cut down by rapid action.

I. Installment buying is unscientific commercially.

A. It assumes a level of income.
   1. We have no assurance that the present state of prosperity will continue.
   2. It overlooks periods of depression.

B. It overburdens the working man with debts.
   1. Contracted at high price levels, debts prove intolerable in subsequent years of depression.
      a. They must be paid in deflated dollars.

C. It is unfair to large manufacturing concerns.
   1. It encourages overproduction.
      a. This leads in turn to subsequent unemployment and business depression.

D. It overburdens the nation's credit power.
   1. When there is too much credit on the business books of the country it takes a slight thing to cause a business depression.

a. One concern will close down on another and others will follow suit.

II. Installment buying is unscientific from a business standpoint.

A. It creates an unhealthy state of trade.

1. It results in temporary stimulation of business.

a. This results in building up an unsound credit structure.

2. Depreciable goods are sold on this plan.

a. Installment buying should be restricted to goods of lasting value.

3. The buyer gets less than he otherwise would for his money.

a. He pays a high rate of interest on his investment.

(1) This actually increases the cost of what he buys.

B. It may lead to business depression.

1. It robs the future for the present.

a. The purchaser on the installment plan is curtailing his power for future buying.

2. It contributes to the building up of inflation.

a. There is a limit to the elasticity of credit.

III. Installment buying is unscientific personally.

A. Increased buying does not benefit the wage earner.

1. It was created primarily by the desire to increase sales beyond what consumers could pay for.

2. It has little effect on wages.

B. It encourages the wage earner to go into debt.

1. It encourages him to spend rather than to save.

a. He is over-influenced by salesmanship.

b. He buys more than he can afford.

2. It has a bad effect morally.

a. It leads to carelessness in meeting obligations.

b. The worker indulges his desires rather than buy what he needs.

C. It impairs his social and financial status.

1. Records of bills of long standing are kept by the Chambers of Commerce where anyone may read them.

NEGATIVE

INTRODUCTION:

A. Definition of terms.
   1. "An installment sale or purchase is one in which the price of the goods is to be paid in fixed portions at stated intervals." (W. C. Plummer)

I. There is no need drastically to curtail the practice of installment buying.
   A. The scope of installment buying is not large enough to make this practice detrimental.
   B. Only "15 percent of all goods bought at retail is purchased on the installment plan." (W. C. Plummer)
   C. Much installment buying is admitted to be beneficial.
      1. Real estate.
      2. Life insurance.
      3. Stocks and bonds.
   D. The amount of installment buying over and above that which is admittedly good is not harmful.
      1. The merchant's interests are safeguarded under installment buying.
         a. Credit bureaus enable him to ascertain the financial standing of applicants for credit.
         b. By tightening credit he can eliminate risk in installment buying.
         c. He is protected by the uniform sales act and uniform conditional sales act.
         d. Statistics prove that losses due to installment buying are exceedingly small.

II. Installment buying benefits the buyer.
   A. The buyer does not go beyond his means.
      1. Protection afforded the seller is double-edged, protecting the buyer also.
      2. The small percentage of repossessions shows that people are meeting their bills.
   B. Installment buying enables the purchaser to secure more necessities and comforts.
      1. "Luxury" is a relative term.

2. Worthwhile articles constitute the majority of things bought.
3. Interest charges are not excessive.
4. It decreases the final cost by increasing production.

C. Installment buying is a definite incentive to thrift.
1. It encourages responsibility in meeting payments.
2. It has not had a detrimental effect on the growth of savings.

III. If the prosperity of the United States is not detrimentally affected by installment buying, installment buying should not be drastically curtailed.

A. There are five circumstances necessary to secure prosperity in any country. They are:
1. A sturdy credit system.
2. Good production.
3. Good advertising.
4. Good consumption.
5. Good foreign trade.

B. These five circumstances are present and on the increase in the United States today.
1. Our credit system is functioning very well.
2. Mass production is steadily increasing in the United States.
a. Installment buying is one of the main causes of mass production.
3. Our advertising system is the largest and most efficient in the world.
a. It is the natural outgrowth of mass production.
4. Consumption of goods is increasing in the United States.
a. Installment buying is one of the main causes for increased consumption.
5. Our foreign trade is steadily improving.

C. Therefore, since prosperity is on the increase in the United States, installment buying is not affecting its prosperity detrimentally and therefore should not be drastically curtailed.

INSTALLMENT BUYING

WHEATON COLLEGE
versus
MARQUETTE UNIVERSITY

FIRST AFFIRMATIVE

Katherine Hurlburt, Wheaton

The attention of the business world today is focused on that most paramount of economic practices, installment buying. This system began in France before the Revolution. In 1807, Cowperthwait & Sons, furniture dealers in New York, adopted the method. By 1875, sewing machines, pianos and books had been sold on this plan. With the advent of the automobile, this new purchase method advanced rapidly, until now almost any article may be purchased on the installment plan. Since the system at present is so widespread and because the evils in it condemn it, we believe that the practice of installment buying should be drastically curtailed.

By installment buying we mean the purchase of an article in which the price is paid in fixed portions at stated intervals; and by "drastically curtailed," we mean that it should be cut down by rapid action.

Our argument, tonight, is based on the fact that installment buying is unscientific commercially, economically and personally.

Caillaux, former premier of France, said, "The prophet of disaster is never popular, but I still hold that he who would help his fellow-men, can do so in a real sense only, if, when he sees clouds arising in the distance, he points out untiringly and at no matter what cost to himself how they may be dispersed."

So we, tonight, are pointing out to you these clouds, even though we realize that the safe prediction that we are riding for a fall is unpopular doctrine. If we could only reach the point of curtailing this system of installment buying, disaster to the nation as a whole could be avoided.

Economic and social conditions fluctuate in correspondence with the business cycle. Therefore, good and bad times are continually alternating, and every man has his ups and his downs. Contrary to this fact, the installment plan assumes a level of income. George Horace Lorimer, editor of the *Saturday Evening Post,* states, "Any scheme of installment buying is to some extent based upon the assumption of the maintenance of the present level of income. This means the budget is contingent upon prosperity." But we have no assurance whatsoever that we shall continue in the present state of prosperity. We are now in a long cycle of declining prices, and the phenomenon of wage-earner's prosperity is very noticeable.

However, the lag between the industrial and commercial wage-scale and the price level is very considerable, and if the rise or fall is continuous and gradual over a period of twenty or twenty-five years, as is usual, there will exist a permanent discrepancy between the two. In other words wages never catch up to prices, either rising or falling, until prices reach the end of the long cycle and start to move the other way.

Moreover, the installment plan overburdens the working man with debts which, contracted at high price levels, prove intolerable in the subsequent years of depression. C. R. Noyes, a St. Paul business man and student of economics, terms it a "method of milking the working-class dry." Installment buying is inflation of the worst kind—in hard times this large debtor class is forced to pay in deflated, higher value dollars what they have contracted for when dollars were cheap.

In the aggregate the building up of debt through the partial payment plan results in booming boom years, and starving lean years. It is a process of exaggerating the peaks and the valleys of the business cycle by which a fool and his money are parted for years to come. Certainly an unhealthy state of trade! I wonder if this installment plan would flourish in Scotland.

Installment buying is not only unscientific in assuming a level of income and in overburdening the working class with debt, but equally so in regard to the business interests, and the credit powers of the nation.

Intensified competition among financing corporations, manufacturing concerns, and the many, many little shops is doubtless a great cause for the increasing use of the installment plan. Indeed, the force of competition, and the efforts of merchants

to extend their trade among the less wealthy classes of consumers, have resulted in more and more liberal extensions of credit in many lines, until now a large part of trade is done on the installment plan. Because of this the manufacturer has had no idea of the amount of goods to produce for the consuming public and consequently production has been extremely irregular. This in turn has resulted in a tendency towards over-production, which has led to subsequent unemployment and depression. Francis H. Sisson, vice-president of the Guaranty Trust Company of New York, says that he is "opposed to all forms of installment buying, because such a system induces the consumer to buy more than he needs, thus causing over-production, which is generally a forerunner of a period of depression."

When the next period of general depression is upon us, those manufacturers and retailers who have been unduly stimulating their sales by the deferred payment plan will doubtless find their market flooded with second-hand apparatus of living "repossessed" from delinquent purchasers. At the same time their normal market will have contracted due to the diminished purchasing power always present during hard times. Finally, the frame of mind of the consuming public will be adverse to going into debt, as is usually the case when the future is gloomy and uncertain. Each one of these factors operating singly is enough to depress any industry.

Bankers concur with the conservative opinion of industry that the present tendency in various installment lines to reduce initial payments, and to spread consequent payments over longer and longer periods, in an effort to maintain volume of sales, will precipitate trouble by exhausting markets, with resultant unemployment and industrial depression. Pessimistic you say? No, we are merely prudent!

Of course we realize that the "entire business structure is built upon a foundation of credit"—to quote Mr. Seligman—but, if by selling on installment terms, our dealers add materially to the already weakened national credit structure, or if they weaken their financial positions so that local or national depression must reap an unusually large harvest in their ranks—then the advantage to everyone and to business is more than offset. When there is too much credit on the business books of the nation, it takes a small thing to cause a depression. One concern will shut down on another; still another plant will follow suit—and

so on—just like dominoes set up in a row. A slight tap knocks the first down and one after another topples over until the whole row lies flat!

If the nation's credit powers were severely burdened by some economic emergency, the National Association of Credit Men believe that the present tendency to create an "overload" of individual credit might become extremely dangerous. This warning was issued in the belief that upon the proper use of credit rests, in the largest measure, the prosperity and happiness of the country at large. So we maintain that installment buying endangers credit and the prosperity of the nation's business, that it is equally unscientific in a false assumption of a level of income, and in overburdening the working class with debt; and should therefore be drastically curtailed.

FIRST NEGATIVE

Marguerite Riedl, Marquette

It is my privilege to welcome the ladies from Wheaton College in the name of Marquette University. This is the second time that Marquette University has had the opportunity of debating a team from Wheaton College in Milwaukee, and I sincerely hope that next year will bring a similar meeting.

What is installment buying? According to W. C. Plummer of the University of Pennsylvania, "An installment sale or purchase is one in which the price of the goods is to be paid in fixed portions at stated intervals." (*Annals of the Academy of Political and Social Science.* Vol 139. January, 1927) In fixed portions at stated intervals—therein lies the difference between installment credit and other credit. "Installment credit is liquidated piece-meal or in successive fractions rather than in a lump sum" said Edwin R. Seligman of Columbia University in his *Economics of Installment Selling.*

But the scope of installment buying in American business is not big enough to be detrimental to the country. Only 15 per cent of all goods bought at retail are purchased on the installment plan. This figure was obtained from W. C. Plummer in *Annals of the Academy of Political and Social Science,* January, 1927, p. 2. President Coolidge said at a press conference in Washington, "Installment buying is not of sufficient magnitude to

be the cause of worry, when considered in comparison with the nation's total income." (*Printers' Ink,* Vol. 137, p. 92, December 9, 1926.)

Why then should we drastically curtail the practice of installment buying which by the statement of expert economists is not of sufficient magnitude to be detrimental to the prosperity of the country? Not only that, but a large share of the goods bought on the installment plan is stated to be a positive good by many economists. In fact they all agree that installment buying is beneficial in the case of houses, life insurance, stocks and bonds. As to these, even the Affirmative will admit that installment buying is working effectively. I would ask the Affirmative—are they going to curtail this phase of installment buying, and if so how far will they drastically curtail?

After all, there is but a very small percentage of the 15 percent about which to argue. This small percentage of articles purchased on the installment plan includes "automobiles, household furniture, pianos, sewing machines, phonographs, washing machines, radio sets, jewelry, clothing, tractors, gas stoves, electric refrigerators, vacuum cleaners, farm equipment, improvements to buildings." (W. C. Plummer. *Social and Economic Consequences of the Installment Plan.* p. 12) This is the usually accepted list because it comes from an impartial and nationally known observer of installment buying, namely W. C. Plummer of the University of Pennsylvania.

If the seller of these goods on the installment plan is protected, there is no need drastically to curtail the present practice of installment buying. The seller of these goods on the installment plan is protected against any abuses of the system. Every firm has its credit bureau which is supplied with information concerning:

1. All accounts charged to profit and loss.
2. All accounts placed for collection.
3. All accounts sued and judgments obtained.
4. Unfair returns of merchandise.
5. Domestic trouble.
6. "NSF" bank checks.
7. "No account" bank checks.
8. New accounts.
9. Repossessions.
10. Unsatisfactory accounts.
11. Attorney accounts. (Pittsburgh Credit Bureau Inc.)

Consequently, when a man wishes to buy, say an automobile, on the installment plan, the merchant immediately sends word to the credit bureau for information regarding the man's credit character. With little difficulty, communication can be made with other firms and even the national and international credit associations. So you see, the seller is amply protected against any abuses of the system of installment buying. If the buyer's credit is good, the merchant will of course give installment credit—if it is not good and he gives the credit anyway, that is his own loss and certainly the blame cannot be laid on the system of installment buying. Why then should the practice of installment buying be drastically curtailed?

In addition to the protection given by the well developed credit bureaus, sellers under the installment plan have the protection of tightening credit. When the down payment is made sufficiently large, people unable to meet the amount will not apply for credit. Then, too, those people who have made the large down payment—the result of tightened credit—are not very likely to default in the rest of their payments. "In the automobile industry, experience has proved that where a down payment of one third has been made, *one* out of fifty-seven cars is returned, whereas if the terms are more liberal, the percentage of failure is greater." (*American Review of Reviews*. December, 1927. *The Installment Plan: A Study*)

So you see, the seller of goods on the installment plan is safeguarded against any abuses of the system by the means of tightening credit. There is no need, therefore, to curtail the practice of installment buying.

But if tightened credit does not bring sufficient protection, there is always repossession of the goods as a last resort. The merchant can get his goods back if the consumer fails to meet payments. However, this has seldom been found necessary. H. B. Tremaine, President of Aeolian Piano Company said, "Experience has shown that the number of *repossessions* was so small that it did not require consideration." George Schwippe tells us in *Dry Goods Economist* (p. 24. 1926) "Department stores have found that *repossessions* of merchandise have been negligible when proper care was taken in the granting of credits." And such is the case with many other concerns—repossession is seldom found necessary. However, the protection is there for the seller under the installment plan, and for that reason the practice of installment buying should not be curtailed.

Installment buying holds few losses for the merchant. George A. Peiffer, Credit Manager of Gimbel Brothers, said, "The percentage of *losses* of Gimbel Brothers on installment sales is very slight. Persons who buy on the long-time payment arrangement are good solid citizens." (First Wisconsin National Bank. *Installment Buying*) B. L. Winchell, President of the Remington Typewriter Company, tells us, "Our losses are very small." John J. Raskob, Head of the General Motors Finance Corporation, said, "During the years 1922, 1923 and 1924, the General Motors Corporation purchased consumers' obligations aggregating to $278,223,000. All of these have been paid except $238,078, represent bad debt losses. This is under one-twelfth of one percent."

Installment buying involves an outstanding debt of only four percent. (Charles Hanch. *Forum,* May, 1927) What does this four percent show? It shows that the people are not going beyond their means just because of the installment buying system, and it shows that the system holds absolute security for the business man. Therefore, the practice of installment buying should not be curtailed.

SECOND AFFIRMATIVE

Lillian Fiebrantz, Wheaton

There is nothing new about installment buying, but there is something new and dangerous in the extent to which it is now practiced.

The present practice of installment buying is not only unscientific from a commercial standpoint, but from an economic standpoint as well, because it creates an unhealthy state of trade, by affording a temporary stimulation only, by the depreciable goods which are sold, and by giving the buyer less for his money; and because it may lead to depression, by robbing the future for the present and by building up inflation.

The installment plan has worked out in a way which is alarming to the state of trade. A temporary stimulation is offered, and people are led to believe that this will be permanent. All those commodities which heretofore have been beyond the reach of the poor and middle classes have suddenly been lowered to such an extent that they can have them practically for the asking. Everywhere you look, you see goods offered on the installment

plan. People are urged to buy. Think of the many concerns in Chicago dealing in clothing alone. And I suppose they are in Milwaukee, also. If they can only get your name on their mailing list they will send you catalogs and literature galore, portraying the system in such an alluring way that it seems a shame not to avail yourself of the opportunity to trade with them. If every man would only be reasonable with himself, if he would only stop and figure out to what extent his income is already tied up on installment payments, the practice would not be so deplorable. But as it is, with the temporary stimulation that is offered, the thing is carried out on such an unsound basis that we find men and women hopelessly in debt because of it.

All the merchant gains from using this plan is temporary stimulation of business and when the competitor does the same thing, all on equal footing, they have built up a most unsound credit structure.

Then it creates an unhealthy state of trade because of the depreciable goods that are sold. Installment buying of goods of lasting value may have been all right, but because it has been carried to excess both in quantity and quality, we believe the practice has had its day and should be drastically curtailed.

Senator James Couzens says, "In buying real estate that may enhance in value, and homes that may last a life time, there is some justification for installment sales; but when articles that are decreasing rapidly in value and are being consumed each day are sold on the installment plan, I believe it is unsound economically."

So it is not the system that has caused apprehension in certain quarters, but the extension of the practice into many lines of consumers' perishable or rapidly depreciable goods.

J. George Frederick, an economist, and editor of *Printers' Ink* has given us some startling figures which show that installment selling creates an unhealthy state of trade by giving the buyer less for his money. "The economics of installment selling is far worse than at first it seems. There is a seemingly harmless 10 percent which is added to the normal cash price. Most of the time, however, merchandise is extravagantly priced to begin with. And then, of course, interest is added each time a payment is due. When you buy a radio, say, costing $110 on time, you pay $10 down. This reduces your

principle and every payment you make similarly reduces it so that at no time in the year do you owe the full price. Therefore at no time are you paying as little as 10 percent, since logically this percentage charge could only be applied to what you owe for the time period that you owe it. Thus figuring, we see the firm is charging about 24 percent for time accommodation." Evidently the buyer is being charged for more than the article is worth, and he is thus getting less for his money.

Now, Friends, it would not be so bad, and we should not be so concerned over the situation if this happened occasionally; but we have shown you the excessive use of installment buying and our opponents will admit it is widespread. Therefore people all over the country are giving out more money than they are getting value for in merchandise. And this is surely an unhealthy state of trade.

Hawthorne Daniel, an author on the staff of *World's Work,* says, "Always the consumer pays, and furthermore, and this is one of the uneconomic features of the business, he generally pays handsomely."

The National Association of Credit Men prepared a statement concerning installment credit, and among the disadvantages, they emphasized the fact that the cost to the consumer is always higher.

The seller is protected, and Irving Fisher, Professor of Economics at Yale says, "On the side of the buyer he can be reasonably certain that his combined installment obligations are not too much, if they do not exceed 10 or 15 percent of his income. But if he should have to live over again such a period of business depression as that of 1920 and 1921 when the drops in prices and money incomes increased the weight of any debts he had shouldered by 70 percent, he would be thankful if his installment bills were at a minimum."

Now according to the Portland *Oregonian,* the share of the workingman's future wages mortgaged for purchases on deferred payments is 39 percent. Think what that would mean in case of financial depression! As it is, 39 percent is altogether too much, for it takes over 50 percent of the workingman's wages to take care of everyday expenses; and when sickness or some other unexpected drain on the pocket-book comes it is mighty hard to meet it in ordinary circumstances, and if 39 percent of that money is tied up in installment payments,

what does the man do? Mr. Fisher is right in saying it ought not to be over 15 percent, but we know from experience that it generally far exceeds that.

Thus we see that installment buying not only creates an unhealthy state of trade, but it may lead to depression, because when the buyer ties up his money, he is robbing the future to pay the present.

Most of the notes which are a part of the vast sum of installment selling, which has now exceeded $5,000,000,000, will be paid off within twelve months, probably, but until they are cancelled the debtors will buy less for cash than if they were free of debt. Their money is tied up for at least ten or twelve months. They cannot buy new articles to the extent that they could if they were not bound tooth and nail to their installment payments. Depression could easily come when we realize that this condition is prevalent over the entire country.

According to the *Oregonian* "It has the psychological effect of inducing purchasers to plunge into installment buying without sufficient realization of eventual payment. It reduces the amount of money available for investment and increases the cost to the consumer."

A. W. Newton, Vice-President of the First National Bank of Chicago, says, "The danger for the individual consumer is that he may over-hypothecate his future. The enormous development of installment selling within the past few years has not been entirely healthy. The mortgaging of many small incomes for future payment for so many different articles, most of them not necessities, is demoralizing to the individual, and in times of depression will prove an added burden to the economic structure of the country."

All of these factors lead to a state which could fast bring about depression, but there is still another element which contributes—the building up of inflation.

The danger in installment buying is more round about and subtle than mere lack of saving, though that is real too. It arises from the deceptive elasticity of credit as an instrument of economic processes. Credit is a useful means of carrying on business. But there is a limit. Credit begins to expand unwholesomely, prices rise, too large a structure of financial obligations is erected on the existing foundation of the consumer's limited purchasing power. A collapse of trade, and

heavy losses are in prospect. We call this economic disease inflation and the more enlightened bankers and business men, after the disastrous experience of 1920, are trying to avoid it.

Installment selling, according to President-elect Hoover, "induces some people to spend beyond their means and to enter upon purchases less necessary than others for their own welfare. When badly managed it results in higher prices and builds up some element of inflation in credit."

To sum up, let me give you Henry Ford's view of installment buying as it is today. "There is too much debt for one thing, too much installment buying. We must learn to call credit by its real name—debt. When financiers flourish on credit, you may depend on it that plenty of other people are withering under debt. The American home needs better business management. It should keep solvent and liberate itself from the pressure of high-powered salesmanship reinforced by the installment lure."

In view of these facts, we are fully convinced that the ill-effects of installment buying far outnumber the good effects. When you stop to consider that this practice creates an unhealthy state of trade, by affording a temporary stimulation only, by the depreciable goods which are sold and by giving the buyer less for his money; and that it may lead to depression, by robbing the future for the present and by building up inflation, you can see that it is economically unscientific, and should be drastically curtailed.

SECOND NEGATIVE

Josephine Purtell, Marquette

Mr. Chairman, Honorable Judge, Worthy Opponents, Ladies and Gentlemen: Sometimes I feel that the attacks against our present practice of installment buying are greatly exaggerated and quite unwarranted. They remind me of the story of the college youth who was out on a party. The "morning after the night before" he had a terrific headache. Every little noise got on his nerves. In walked his pet cat only to be greeted by the outburst, "Oh, for goodness' sake, Tabby, quit stamping your feet on that rug!" Just as the cat's velvety tread was

loud in the boy's ears, so the minor abuses of installment buying are exaggerated in the minds of those who attack it.

The two classes of people connected with the easy payment plan, namely the seller and the buyer, are not only adequately protected, but they are positively benefited. The first negative speaker has shown how well the merchant is protected from loss, but even among people who admit this fact, there are those who believe that the buyer suffers. They cry: "The American wage-earner is buying too many articles on the installment plan. He is mortgaging his future earning for luxuries for which he pays too high a price, and then he defaults in his payments and the article is taken from him." These are serious charges and we must examine the truth of such statements.

If a man is kept within his means and still can buy more of the necessities and comforts of life, the present practice of installment buying should not be drastically curtailed.

The security afforded the man behind the counter protects the man across the counter. In most cities there is an association of commerce, with a retail credit bureau which is allied with most of the important stores in town. The credit man who warns the merchant that a certain prospective buyer is a bad risk because he has not paid his bills in the past or because he has already contracted for an amount of goods as great as he can handle, is preventing the buyer from going beyond his means.

The very fact that the percentage of repossessions is so small, as shown by the first negative speaker, shows that the vast majority of installment buyers are meeting their bills.

The installment plan has proved a boon to the American people, a real horn of plenty. It has placed within the reach of the common man articles which have made him a happier and more useful member of society. Today the bookkeeper's wife has her washing machine, her vacuum cleaner and her radio on the easy payment plan, all of which were possessed formerly only by the socially elite. In short, the gap between the rich and poor has been lessened, thus making for the democracy which is the pride of America.

Installment buying has directed the purchasing power of the nation into worthwhile channels. Some people have the idea that luxuries constitute most of the purchases. Nothing could be farther from the truth. In the first place we must

remember that "luxury" is an elastic term. As Wilbur C. Plummer of the University of Pennsylvania in his book, *The Social and Economic Consequences of Installment Buying,* remarks: "Necessities and luxuries are two terms difficult of definition. . . The question depends entirely upon the individual or the class of individuals under consideration." Certainly for the physician an automobile is a necessity, and who would expect a woman who runs a large boarding house to do without a gas stove? The standard of living is so high in the United States today that we consider as necessities many things which the Englishman and Frenchman would promptly label luxuries, but as Voltaire said, "In a land where the inhabitants went barefooted could luxury be imputed to the man who first made a pair of shoes for himself? Or rather was he not a man of sense and industry?"

Keeping in mind the fact that "luxury" is a relative term let us examine the list of things bought on the easy payment plan and see how many of us would be willing to live our lives without them. They are in order: automobiles, household furniture, pianos, sewing machines, phonographs, washing machines, radio sets, jewelry, clothing, tractors, gas stoves, electric refrigerators, vacuum cleaners, farm equipment, improvements to buildings. Notice how far down on the list come jewelry and clothing. Prohibit the buying of fur coats and diamond rings on time if you will, but is that drastically curtailing the present practice? For the greater part these articles are well worth while.

At this point it might be well to stop and consider the price we pay for the privilege of living a more comfortable life by means of the easy payment plan. Does the payment of interest run up costs so that we pay more than the commodity is worth? Of course we must admit that it does increase costs, for the interest is merely the price of the convenience of the system, but on the whole costs are not excessive. In every business you will find the "crooks," the "Shysters," who are out to beat the public, and this type might be expected to abuse the installment plan but can we condemn the present practice merely because a few abuse it? Those who charge excessive interest soon discover that they are merely defeating their own ends for in the struggle of competition, they invariably lose

out to reputable companies who furnish good service at a reasonable cost. I was interested to discover the difference between cash prices and installment prices, so I enquired of representative Milwaukee concerns. At the E. M. Jordan Buick Company, they said I might have an automobile for $1355 cash and $90 more on the installment plan. At Berger's Furniture Company, there was a dining-room set for $500 cash and $30 more on time, surely not an unreasonable charge. The Edmund Gram Piano Company had an A. B. Chase piano for $1300 cash with an extra charge of only $52 for the music-lover who might wish to space his payments. The radio-fan, I discovered, might secure a $200 Atwater Kent radio at Samson's Radio Company for $208 on time. Finally I stopped at the Milwaukee Electric Company where the interest rates were also reasonable. They had a Torrington Vacuum cleaner selling at $59.75 with a difference of only $3 on the installment plan. A washing machine whose cash price was $87.50 would cost $93.63 on the easy payment plan. These figures obtained from various reputable stores in Milwaukee are typical and similar ones could be found in cities all over the United States.

While we must admit that installment buying does add a small burden of cost because of interest charges, it must be remembered that the installment plan has increased production and in the long run decreased costs of manufacturing.

Albert R. Erskine, President of the Studebaker Corporation, says, "The average car of today produced in only the quantity that could be sold for cash, would cost $300 more than its present price." Ultimately installment buying has given to the consumer a better article for less money.

Does installment buying encourage reckless overspending or does it encourage thrift? We of the Negative believe that it encourages a man to look ahead and plan a definite economic program. George Schwippe in *Dry Goods Economist,* 1929, on page one, says, "It encourages thrift by making it possible for the wage-earner to budget his expenditures and thereby live within his income and accumulate a surplus." The possession of an article partially paid for is an incentive to thrift. De Forest Hulburd, President of the Elgin National Watch Company, says, "It is easy to say that a man should not mortgage his future buying power but, on the other hand, many of the leading business men in this country urge their employees to get into

debt for the necessities of life." A man who realizes that he must meet future payments will do his best to hold his position.

Has installment buying discouraged saving? While it would be hard to show a definite causal relationship between the growth of installment sales and the growth in savings, it is at any rate obvious that installment buying has not caused a great drop in savings. According to the *Banker's Magazine,* March, 1927, "Savings bank depositors who numbered eleven million in 1912 numbered forty-three million in 1925. Their deposits increased within the same period from $8,400,000,000 to $28,400,000,000. Life insurance protection outstanding in 1912 amounted to sixteen billion. In 1925 the figure had grown to seventy-two billion. Home building increased 455 percent within the eleven most active years of installment buying, from 1915 to 1926." We may conclude that the bankers of the country need fear nothing from the present practice of installment buying.

Because the easy payment plan keeps the consumer within his means and yet enables him to buy at reasonable cost more of the necessities and comforts of life, and because it is a definite incentive to thrift, we believe it is a blessing to the American people and certainly should not be drastically curtailed. As Mr. W. C. Plummer says, "We believe that the system is an important contribution to modern economic organization, and that in time it will be recognized as such, even by those conservative people who at the present time see little good in it."

THIRD AFFIRMATIVE

Bernice Stuver, Wheaton

"Song of National Credit Men's Association"

"A friend of mine bought a gramaphone,
For a dollar down and a dollar a week.
This is the easiest graft I've known—
This dollar down and a dollar a week.
So he bought a chair and a fountain pen
A runabout car and a stove, and then
A set of the 'Lives of our Famous Men'
For a dollar down and a dollar a week.

"Then he bought two brand new radio sets
For a dollar down and a dollar a week.
And a dozen cartons of cigarettes
For a dollar down and a dollar a week.
Then he bought a ring that was fair to see
For the lily-white hand of his bride-to-be;
And after the wedding the minister's fee
Was a dollar down and a dollar a week.

"Then he bought a house for his familee
At a dollar down and a dollar a week,
And then they got sick; the doctor's fee
Was a dollar down and a dollar a week.
Then said his wife: 'I must be free;
These weekly payments are ruining me!'
So she got a divorce, and the alimonee
Was a dollar down and a dollar a week."

We have pointed out the unscientific aspects of installment plan buying from a commercial or general business standpoint in that it falsely assumes a level of income, overlooking slow business periods, and over-burdens the nation by putting too much credit on her business books which invites a very small thing to cause a panic.

From an economic or financial point of view we know that it creates an unhealthy state of trade by affording temporary stimulation, by selling depreciable goods upon which the payments last longer than the article. The coal business suffered severely by adopting the installment plan. Mankind has a peculiar distaste for paying two bills: one for a horse that is dead and one for coal that is burned. Also, foresighted business men are aware that such an extensive credit system may lead to depression because the future is robbed for the present and inflation is built up.

There are sufficient reasons for condemning the system as it is used today but it is more than a business affair,—it is a *personal* and practicable question. Those who defend the system say that installment buying demands increased production which in turn increases employment which increases the purchasing power of the individual. Let it be remembered that installment buying was not created by the public's desire to purchase more than it could pay for, but by the desire of the

manufacturers to sell more than the consumers could pay for. To accomplish this end, producers sent out agents to canvass and hired ad-writers to portray picturesquely the blessedness of enjoying an article while paying for it.

The recent gigantic extension of the installment plan is due to the beating of the rapidly increasing productive capacity against a market limited by a popular purchasing power which does not grow as fast as the product.

It is delusion to believe that credit can go on being expanded indefinitely with no expansion in the income on which it is based. If retail consumers discount their future purchasing power in order to buy an increased product there must come a time when the production of the goods they buy will be correspondingly curtailed provided their incomes in the meanwhile do not increase as rapidly as the goods offered them for sale.

Income *does not increase* as installment buying grows. If a factory sells more autos by extending its time payments the first effect is to increase its profits. Those who share in the profit receive larger incomes. Those who receive interest on bonds and loans probably do not. Those who receive rent probably do not—at least for a time. Salaried employees *may possibly* benefit. Wage-earners—the great majority concerned—*do not* automatically benefit. Their wage rates may or may not be increased. The production of additional autos may have occasioned the hiring of additional wage earners but it was more likely achieved solely by more efficient machinery or management. Statistics of recent years show no marked increase in incomes. Increased business is due mostly to greater technical efficiency; therefore, we have made it plain that the Negative cannot prove that installment buying beneficially aids business or the consumers and wage earners.

It is contended that the installment plan helps a man purchase many things he could not otherwise have and therefore contributes to his happiness. It sounds very good, but theories are often very impractical. Put yourself in the position of the individual we are discussing. Every time you get your pay check you owe a dollar and a half to one company, five dollars to another, and perhaps eleven dollars and a half to another. Debts never made any man happy. Financial worries have

caused many suicides. Installment buying encourages debt and over-spending. The high pressure salesman, acquainted with psychology and business tactics, in his intense desire to sell, for thus he makes his living, influences and persuades people to buy things they do not need nor want nor are able to afford. In spite of cartoons and the frequent jest there is a serious problem in "keeping up with the Joneses." Those who are striving to live successfully know that happiness consists in living within one's means and being content with such things as he can work for and afford. The modern term for debt is "Consumer's Credit," and the polite phrase "deferred payments" has been coined to cover a multitude of sins against thrift and economy. Quoting Mr. A. L. Mills, President of the First National Bank, Portland, Oregon, "Can anyone view the vast expansion of retail credit throughout the country with other than alarm? High pressure salesmen are striving to crowd two years' business into one. And so long as deluded purchasers can be made to sign on the dotted line, the time limit is inconsequential. Result! Wage-earners are mortgaging future earnings for gratification of present-day pleasures without considering that the morrow may bring sickness or unemployment."

The temptation must be resisted! The fact that you can raise money does not justify its expenditure. Such a habit leads to a real moral failing. The income of the average man is less than $1,500; 80 percent of that is required for bare necessities, excluding the automobile, which leaves 20 percent for auto, savings and luxuries.

How can the installment plan make a man's money buy more things? A man's weekly pay can buy just so much. We are in a day of unprecedented unemployment. This is a great machine age. We are enjoying overwhelming prosperity now, yet there is the largest percentage of unemployment ever known in the history of the world in an age of similar prosperity.

The *Literary Digest,* August 1, 1925, tells us that "too much credit is not good for the worker. He is entitled to luxuries but not by mortgaging his future earnings. Such a practice deprives him of his personal freedom. The Negative contend that mercenary obligations keep a man contented at work, thus industrial discord and strikes are avoided. If mercenary obligations made by purchasing on the installment plan are the motive of man's work, *he's a slave."* J. George Frederick, a

practical economist, says, "Installment buying as a habit is enervating to character because it leads to serfdom. If anything is un-American, surely that is."

The defenders of installment buying contend that "desire is the greatest driving force of man's life; it spurs him on to work, slave and save." A poor way to defend their purpose. Installment buying makes a man a slave to his desires by creating false desires and making it possible for him to get anything he wants, and a great deal more than he should have. The individual who subjects his better sense to such bondage becomes very selfish. The payments *seem* so easy that the buyer is easily beguiled and loses a clear conception of real circumstances, and purchases far beyond his means. Results: He is laden with debts, which causes his mental activity to decrease through worry; thus his health is endangered and his efficiency and earning powers are lessened. It also develops that instinct of "getting something for nothing" which is gambling.

Besides reacting in such an unfavorable manner upon the individual consumer it may be briefly stated that installment buying impairs his social and financial status. It is a known fact that people who owe money to several companies are not conscientious about grocery bills. Records of such bills of long standing are kept in the records of the Chamber of Commerce where anyone may read them. Every man is vitally interested in his own standing and though we who are emphasizing the dangers of the system will be accused of borrowing trouble, clear thinking people plan wisely for the future.

If each individual case is personally investigated and terms are made accordingly, with proper restrictions on the system it can be worked out profitably, but any other system, such as those now in use, is arbitrary and unscientific, and when, because payments cannot be met, money and article are both forfeited, it results in wasted credit.

Therefore, we, the Affirmative, believe that installment buying should be drastically curtailed.

THIRD NEGATIVE

Edna Goeden, Marquette

It was impossible for me to obtain any such song as my opponent gave you, but it might be well to remark in passing

that if this man and woman of whom the Affirmative talked had tried to buy all these things "a dollar down and a dollar a week," they would soon have discovered that their credit had "gone bad" and no more would be extended them. Moreover, as my colleague also pointed out, it is not a "dollar down" but usually "one-third down" in any installment purchase.

The first point I should like to bring up is this: our opponents have not told us how far they would drastically reduce installment buying. This is a vitally important point in this discussion and we should like to know their stand.

Now, before I continue the Negative case, let me briefly review it as thus far presented. The first negative speaker showed you that the scope of installment buying is not as large as our opponents would have you believe, and furthermore, that installment buying does furnish security to the business man. The second negative speaker proved to you that installment buying offers security to the consumer and even positively benefits him. It only remains, then, to see the effect of the practice of installment buying on the country as a whole. We contend that if the present practice of installment buying is not detrimentally affecting the prosperity of the United States, installment buying should not be drastically curtailed.

According to the economists, five elements are necessary for a nation's prosperity. They are: 1. A sturdy credit system; 2. Mass production; 3. Mass advertising; 4. Good consumption; 5. Good foreign trade. If these five elements are present and even on the increase in the United States today, installment buying is not detrimentally affecting the prosperity of the country and therefore should not be drastically curtailed.

These five elements are present and on the increase today. Let us consider them in order. The first is a sturdy credit system. As Harold G. Moultau, Director of the Institute of Economics at Washington, D.C., says, "Credit is in truth a pervasive, fundamental institution—one that is indispensable to the conduct of a capitalistic industrial system." That is the sort of system we have today. Furthermore, Lionel Edie, Professor of Economics at Colgate University, tells us that nine-tenths of all the business transactions today are done by credit. Let us then see if we have this sturdy credit system flourishing in the United States today. Guy Hulse, secretary and director for the National Retail Credit Association, in the *Credit World*

for February, 1928, had this to say about our credit system, after he made an extensive trip through the country investigating it, "I can truthfully say that credit all along the line seems healthy over the country." Surely this indicates that our credit system is flourishing today. Since this is true, in this respect the practice of installment buying is not detrimentally affecting the prosperity of the country and therefore why should we curtail installment buying?

The second element in a nation's prosperity is good production. As Ely of Wisconsin and his colleagues say in their book *The Foundations of National Prosperity,* "Economically speaking, society thrives or languishes according as production is abundant or scarce." Moreover, Guy Hulse also says that our present prosperity seems to hinge on two things. One of these is mass production; the other mass consumption. But the question then arises, have we good production today? Hoover, in his report as Secretary of Commerce in 1927, said, "The fiscal year ended July 1, 1927, continued the economic progress which has now been characteristic of American industry for six years. It exceeded all previous records in volume of production and consumption." Moreover, Dana Durand, Chief of the Division of Statistical Research, Bureau of Foreign and Domestic Commerce in 1928, said that industrial units in the United States today are much larger than anywhere else in the world and are steadily growing in size. These quotations show that mass production is present and on the increase in the United States. But besides contending this, we even can show that mass production is augmented by installment buying. Herbert F. Boettler in the *Journal of Accountancy,* declares that the effect of installment buying has proven beneficial in many ways, especially by stimulating production. Furthermore, R. H. White, in the *Dry Goods Economist,* says that installment buying has increased production. Since this is true, since good production which is necessary for a nation's prosperity is not only present in the United States but on the increase and actually aided by installment buying, evidently our present practice of installment buying is not detrimentally affecting the prosperity of the United States in this respect and should not be drastically curtailed.

The third element in a nation's prosperity which follows as a corollary to mass production is mass advertising. That this

is present today is self-evident. Ride in the street cars and see the car signs. Ride along the highways and see the billboards lining the way. Tune in on your radio and you will hear advertising coming in over the air. Yes, mass advertising is present and on the increase in the United States today. Evidently then, in this respect also our practice of installment buying is not detrimentally affecting the prosperity of the United States. Why then reduce it?

Following mass advertising naturally is mass consumption. Guy Hulse, whom you remember I quoted before and who is Secretary and Educational Director of the National Retail Credit Association, says that our present prosperity is due to two things, one mass production and the second, mass consumption. Have we good consumption today? Let us again refer to the report of Herbert Hoover for 1927. He says that that year exceeded all previous records in volume of production and consumption. Thus we see that good consumption is present in the United States. We further contend that the practice of installment buying tends to increase good consumption. As Guy Hulse says, "In order that mass production and mass consumption may freely function, a third requisite has entered our commercial life on a tremendous scale, namely installment buying." Thus we see that this fourth element of a nation's prosperity—good consumption—is present and on the increase today and this increase is largely due to installment buying. Obviously then, installment buying is aiding rather than detrimentally affecting the prosperity of the country at least in this regard, and therefore why curtail it drastically?

The fifth and last element in a nation's prosperity is a good foreign trade. Norbert Savay, Special Lecturer on Foreign Trade at Notre Dame, says in his book *Principles of Foreign Trade,* "Foreign trade is among the most powerful factors in creating and multiplying the wealth of the nation." Besides, G. E. Roberts, in the *Economic World* says that "on the finding of profitable markets for the surplus production depends the general business conditions of the entire country." Since this is true, let us see if we have a good foreign trade today. Herbert Hoover, in his annual report for 1927, has this to say: "The excess of exports over imports in 1926-1927 was $716,000,000, a very much greater figure than the year before." Thus then we see that the fifth element in a nation's prosperity, foreign trade,

is present in the United States and is on the increase. Since this is true, evidently in this respect our present practice of installment buying is not detrimentally affecting the prosperity of the United States and therefore should not be drastically curtailed.

Briefly summarizing, therefore, the Negative has pointed out to you that the present scope of installment buying is very small; that this practice does provide security for the business man and also for the consumer, and that furthermore it even aids them. I have proved that the five elements in a nation's prosperity, namely a sturdy credit system, good production, mass advertising, good consumption, and a good foreign trade are present and on the increase in the United States today. Obviously then, our prosperity is not detrimentally affected by our present practice of installment buying. Why then drastically curtail this practice which President-elect Hoover has called the "back-bone of continuing American prosperity"?

FIRST AFFIRMATIVE REBUTTAL

Katherine Hurlburt, Wheaton

The Negative seems to be anxious about how far and how to curtail installment buying. This is a question of fact and we do not have to propose a plan. The question is, "Resolved, That the practice of installment buying should be drastically curtailed," not how, nor how far. How or how far would be irrelevant.

But the Negative would have to adapt their argument to ours. So far they have not. The Negative have tried to show you that installment buying increased production. Possibly it can produce only temporary expansion and like any other form of depression, it must be followed by savings. The surplus required in extra production becomes useless in normal purchasing periods and the process is more difficult than in former periods of deflation.

They tried to show you how it would help the seller, and assure him of no loss. You can see that in periods of overproduction, plants which have been built to carry on the extra production may run smoothly but during periods of depression they are a loss to the seller and manufacturer. Take Westinghouse—during one time of extra production Westinghouse built

a million dollar plant. The plant was built and the work carried on there and then came a period of depression and the whole plant had to be shut down. Certainly there was a loss.

Without the installment plan the consumer will buy only the goods he can afford, will buy fewer goods, and consequently factories will be forced to produce less.

The manufacturer has no idea of the amount of goods to produce for the public and consequently production is irregular and over-production results and subsequent unemployment, and depression results. Installment buying made possible mass production.

George Frederick Chase in the *Independent* for September, 1926, speaks of many fallacious arguments advanced in regard to mass production. He argues that the theory that installment buying keeps mass production good is specious inasmuch as it cannot be a permanent stimulus.

The second speaker says it helps the workingman budget his income. A Milwaukee banker says the weaknesses of the risk are well known. The installment buyer is limited in his means. Secondly he has an uncertain income. Thirdly he generally knows little about budgeting his receipts and disbursements.

Installment buying may afford a method of budgeting, but it may be called an advance outlay of savings. Men mortgage their future earnings, lose their independence, and place their necks in a noose. Only the man who buys for cash can truthfully say that he is "the master of his fate," and "the captain of his soul."

Therefore, installment buying endangers greatly our prosperity and the nation's business, and does not encourage mass production. Mass production comes before installment buying. Installment buying is unscientific and false and should be drastically curtailed. This is so because it is unscientific commercially, economically and personally. Does not the responsibility of the entire situation rest on the financial interests of the country?

FIRST NEGATIVE REBUTTAL

Marguerite Riedl, Marquette

The Affirmative has told you that installment buying will bring great depression to the finances of the country. Ladies

and Gentlemen, I showed you before, in my speech, that installment buying has a very small scope. It includes but 15 percent of the goods sold at retail, and 15 percent cannot cause a whole lot of depression of the finances of the country, and also will not create a great deal of inflation, insisted on so much this evening. Ladies and Gentlemen, they have made a great deal of the vast extension of retail credit, that it is alarming, but they seem to forget that there are other kinds of credit besides installment buying credit, and for that reason this vast extension of retail credit cannot relate to the blame of installment credit, because that includes but a very small fraction of the sum total of retail credit.

They have told you that at the present time credit is too easily obtained. If that is the case, the thing to do is not to curtail installment buying but to tighten credit, and, by doing so it will be found that losses will be small.

The Affirmative told you much about depreciable goods sold on the installment plan and a lot about how the consumer loses money. Plummer, an economist at the University of Pennsylvania, in speaking of the kind of goods sold on the installment plan, says that exclusive of the growth and doubtful item of automobiles, the remaining thirteen articles of those constituting the majority of goods sold on this plan are unquestionably durable goods. You remember they include household furniture, sewing machines and other things, and so Ladies and Gentlemen, depreciable goods are not the large percentage of goods sold on the installment plan. Plummer told you that thirteen out of fifteen are durable.

The Affirmative told you that installment buying builds up debt. But the outstanding debt on installment buying is only 4 percent. That does not loom up as alarming.

They told you that the consumer is not getting his money's worth. The *Bankers Magazine,* Vol. 114, p. 465, says that the most conservative estimate, in estimating an average in 1925, is that the buyer has gained $400 in the price of a car plus equipment, things which mass production made possible by installment sales. Does that look as though the man buying on the installment plan was not getting his money's worth?

The Affirmative talked about a "more and more" extension of credit. Another page of the *Bankers Magazine* says an install-

ment buyer must have worked up to a certain scale and that is fixed, in a particular case, by a certain amount before a note will be accepted for the balance. Another page says that credit will not be extended unless the prospective buyer has met other of his obligations theretofore, which is ascertained by proper investigation, and which will certainly disclose the facts.

Ladies and Gentlemen, I have shown you that the scope of installment credit is small, only 15 percent, and that merchants can sell under the installment plan with proper security, that the credit bureau can tighten credit, and that the article sold under this plan may be repossessed, and that losses are very small.

SECOND AFFIRMATIVE REBUTTAL

Lillian Fiebrantz, Wheaton

We have been speaking a great deal about depression, and they say installment buying is not great enough to cause any alarm. We believe in preparedness.

When Noah built the ark the people laughed, but Noah went on and the flood came.

The first speaker of the Negative says the number of repossessions is so small it should not concern us. Henry Ford says that of the total number of cars bought in 1926, 10 percent were repossessed for non-payment.

People are buying things they cannot pay for. We believe that because people are buying beyond their means, the practice should be curtailed. William Green, Head of the American Federation of Labor, says when people buy beyond their means unsubstantial expansion is caused.

Their second speaker said that installment buying raises the standard of living. We believe that the standard of living is lowered by the system—"A dollar down."

"We must pay for privileges," they also said, but they attempted to show that the cost is very low. One speaker attempted to show that on a $200 installment buy the addition is $8. According to Mr. McGary, President of the Gary Bank, the addition in installment buying is 10 percent. I do not understand how these things can line up with that. Mr. Noyes of St. Louis says it is 12 percent or more. The National Association of Credit says the percent is 20 percent.

The second speaker of the opposition brought up the fact that savings deposits increased due to installment buying. She has not proved that installment buying is the cause. It might easily be due to inflation or prohibition. But we will not go into that. Increase in savings is caused by sound investments. The first speaker said that care must be taken in giving credit, but that is not being done, we believe. Credit is being improperly used.

James Simpson, President of Marshall Field's, says "Excessive use of credits may lead to inflation."

Installment buying should be curtailed, because, depend on it, it means the future detriment of the economic state of the country. It leads people to mortgage their future, and when that condition is established, depression in the whole country is almost inevitable. So we believe the system should be curtailed.

Installment buying affords only a temporary stimulation, and endangers future trade; depreciable goods are sold according to this plan, giving the buyer less for his money, and it may lead to depression and inflation.

SECOND NEGATIVE REBUTTAL

Josephine Purtell, Marquette

In regard to the question whether it is better to have a man work and save and then buy an article, or have him buy an article on the installment plan, may I quote a parody on a line of a popular song, "People are funny that way." How many people, if they were to buy what they really wanted would put aside so much each week and buy then what they wanted? When the second week came the man would say "Next week I will put it away." Only a man of exceptionally strong will power saves money until he has a definite amount and then puts it down on the installment plan. People, instead of saving, will spend for luxuries.

It is an old-fashioned idea that debts make a man unhappy. There was a day when it was a disgrace to have a mortgage on your farm, but today the highest type of citizen thinks nothing of riding in a car which is only partly paid for and of wearing clothes only partly paid for and even using compacts bought on the installment plan. This system does not enslave man but is like a life belt.

It is said the installment plan has a demoralizing effect on character. Alfred Sloan, President of the General Motors Corporation, says people will undergo hardships in the building trade greater than they would have endured before because of the greater incentive to work. These men want necessities and luxuries for their wives and children and will therefore undergo hardships never thought of before.

A. E. Duncan, Chairman of the Board, Commercial Credit Company, says it holds no demoralizing effect on character because it inculcates a sense of responsibility. The man who puts down a note for a certain amount of money and meets the note gains a certain amount in character. Does not the credit company owner agree to write out a check and meet that at the end of the month?

President Coolidge says the installment plan is far safer than running up a bill at the store; we usually charge our groceries and in two months pay the bill. The Affirmative claims that the installment plan affords ridiculously low terms.

Cars are not purchased on a slender margin, as one dollar down. At least 30 percent is usually paid down. Where extremely low terms are advertised the car is usually held for delivery until a substantial amount is paid.

The question is whether the installment system should be drastically curtailed, but we do not think it fair to ask the Affirmative to suggest an intricate scheme, yet we should like to know what class of articles should be drastically curtailed.

As to luxuries, well and good. Do not allow a man to buy a stick pin or a fur coat. Most people will agree, however, that it is economically sound to purchase necessary, durable goods on the installment plan. We must remember that many of these goods bought on the installment plan are labor saving devices, liberating the American housewife, and taking the burden from mothers, and allowing more time for leisure and cultural pursuits.

There are a few minor abuses in the system, but the abuses, such as high rates and excessive buying, have their own remedies. Any concern charging excessive rates brings forth its own ruin.

Because the installment plan benefits both the buyer and seller and does not afford merely temporary stimulation but definite credit, we say installment buying is here to stay, and should stay with us.

THIRD AFFIRMATIVE REBUTTAL

Bernice Stuver, Wheaton

We were not trying to prove that installment buying increases unemployment. We have pointed out that the argument that installment buying increases production was a fallacious contention on their part. The fact that installment buying increases production in no wise affects the question of unemployment.

They say that it increases a man's sense of responsibility when he meets his payments. How about people who do not meet their payments?

They say that having articles helps a man to budget so he can buy them on the installment plan. We say that this so motivates a man as falsely to create desire. He will work hard enough without having installment buying to encourage him in this line.

We agree with our opponents on many points. We are not here to contend that installment buying is not legitimate as a practice, but we contend the system is overworked, and because it is overworked, it should be curtailed, not eliminated. And we agree with them on many points which they brought up in regard to the practice. Since they have not adapted their contentions to ours, we will show we can meet them.

The first speaker dwelt on the small percentage of installment buying, and stated that installment buying was very beneficial. If it is beneficial enough to give everybody the things they desire and need, it is being practiced to excess. Field's have very recently adapted the installment plan in one department.

If you go down a street in Chicago you see many signs—"A dollar down and a dollar a week," and this kind of business is on the increase according to the Marshall Field spokesman, and therefore, how can we make these figures agree?

The first speaker refers to the credit bureau, and says if installment buying does not work the seller can tighten up on credit. Why offer so many alternatives if the present system is so good?

The checking tendency is the thing we advocate. A prominent economist says, "There is a present tendency to keep installment terms within safe limits." The terms are arbitrary

regardless of each one's income and output. Other systems are arbitrary.

The second speaker states that it raises the standards of living. But when you get into the lives of individual men and women, we know that they are in debt, and those debts are a worry to the individuals.

They brought up the argument that it is a good motive for work. This is a poor motive.

In regard to the third speaker's contentions, in regard to the prosperity of the country, her arguments are irrelevant. We say that installment buying has reached such proportions that danger is imminent.

They say installment buying causes good production and prosperity, but we say production is too much on the increase. Foster says, "We now have a greater productive capacity in every industry than we can use." The very fact that the business world cannot get rid of what it has produced already, seems to be conclusive proof that the flow of money does not keep pace with the people who want to buy.

Our opponents talked about mass advertising. What would installment buying do if not encourage it?

Good consumption and good foreign trade, she tells us, are conducive to business. But we are not arguing the prosperity of our country.

We pointed out to you the great dangers of installment buying and based our contentions on the principle that it should not be eliminated, but curtailed. It creates an unhealthy state of trade, hastens the level of the income, involves the individual in debt, gives false motives for work, encourages the instinct of getting what you can easily. We should earn honestly and diligently what we desire. We therefore maintain installment buying should be drastically curtailed.

THIRD NEGATIVE REBUTTAL

Edna Goeden, Marquette

There is prosperity in this country and as long as there is prosperity, accompanied by installment buying, it seems that installment buying does not decrease prosperity. The Affirmative

must show it decreases prosperity; otherwise there is no reason why installment buying should be reduced.

The Affirmative has told you that installment buying will be disastrous in times of depression. However, let me quote to you from a pamphlet, compiled by Professor Plummer of the University of Pennsylvania, on the social and economic consequences of installment buying. He says on p. 49, "On the other hand, there is the possibility that new extensions of credit will be granted in the latter part of the depression period, which will stimulate sales and hasten recovery. In other words, installment selling may be the very device for hastening prosperity and lifting industry out of depression just as it is believed to have done in a number of lines of trade, particularly the automobile business in the depression of the latter part of 1920 and the year 1921. In fact it seems logical to believe that if installment selling were expanded in a period of depression, thereby increasing sales and encouraging production, it could be looked upon as a most useful agency from the standpoint of the business cycle." Thus we see, according to this authority, that installment buying instead of bringing on depression, may be the very device to take the country out of depression!

Another great economist, Professor Seligman of Columbia University, who made a detailed study of this question, says, "When the time comes to pull in sail"—that is in times of depression—"installment buying can cease altogether" if it wishes. In other words credit can be tightened.

However, Plummer shows how installment buying can be used for the benefit of the country in time of depression and therefore for this reason also should not be curtailed.

The fact furthermore, is that installment buying tends to stabilize industry and so prevent depressions.

John Raskob, Head of the General Motors Finance Company, in *Industrial Management* for February, 1927, says that the development of consumers' credit tends to greater employment and is a great stabilizer of national prosperity.

Another economist, George Schweppe, in the *Dry Goods Economist,* says installment buying keeps the wheels of industry turning and does this by maintaining stable market conditions. But more than stabilizing industry, installment buying decreases unemployment although the Affirmative told you it increases

unemployment. They have not and cannot prove to you that unemployment is due to installment buying. But we can show you rather that installment buying drastically curtails unemployment. Without installment buying, Mr. Erskine, President of the Studebaker Corporation, says, only 35 percent of the automobiles could be sold, leading to unemployment for 1,500,000 persons working in the automobile and allied trades. Does not that show that installment buying means employment rather than unemployment?

The Affirmative said installment buying is a temporary stimulant. But what installment sales does is to provide a permanent increase to the extent of an increase in the productivity of the individual, creating better living conditions, and putting the worker in a frame of mind inducing him to work more steadily or harder. It is a permanent stimulation.

The Affirmative told you there was over-production today. But in the words of Professor Seligman, "There is no limit to the growth of demand." There is no irremovably fixed saturation point in progressive society. The Affirmative cannot prove to you there is over-production and consequently this is no reason why installment buying should be curtailed.

Now, then, let me briefly review the case presented by the Negative this evening. We have pointed out to you that the scope of installment buying is so small that it cannot be responsible for all of these evils which the Affirmative would have you believe. Secondly it achieves much security for the business man. It moreover means security for the consumer and benefits him.

Installment buying has not detrimentally affected the prosperity of the country, for we have showed you the five elements necessary to the prosperity of the country, and have showed you these elements are present and on the increase today. Hence installment buying should not be drastically curtailed as the Affirmative desires inasmuch as installment buying does not detrimentally affect the prosperity of the country in these five aspects.

Therefore the Negative maintains that the present practice of installment buying, which, as Hoover says, "is the backbone of American prosperity," should not be curtailed.

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CHAPTER V

FREEDOM OF SPEECH

WESTERN RESERVE UNIVERSITY
and
OBERLIN COLLEGE

RESOLVED: *That the principle of complete freedom of speech on political and economic questions is sound.*

This is a stenographic report of one of a series of seven debates with Oberlin College under the Reserve Plan, devised by Professor Howard S. Woodward, Western Reserve University.

These debates were held before some lodge, club or other civic body as in the ordinary "forum debates" described in *The University Debaters' Annual* for 1925-1926, p. 341. Here also, ballots were given the audience for expression of opinion on the subjects discussed and for comments on the debate; likewise, an alumnus debater was present to decide the debate on the basis of his judgment as to which team did the more effective debating—and to discuss the debate privately with the teams at its finish. A vote was likewise taken to express the shift-of-opinion of the audience on the question itself. The debate differs, however, from the ordinary "forum discussion" in the arrangement and functions of the speakers. In its general outlines, it follows the Oregon Plan. Instead of presenting part of a team case for only ten minutes, one speaker on each side presents the whole argument for twenty minutes. Each is then cross-questioned for ten minutes by an opposing speaker. The third member of each team then presents a ten minute summary of the entire debate.

In the spring of 1928, Professor Woodward obtained the idea of making the third speaker a "guest" speaker from the opposing college. This obviates the evil usually found in the use of the "split team" debate in that each case can be care-

fully planned by the first and second speakers from the same college, and it is not disarranged by sudden consultation with the "guest speaker." It retains the advantage of the "split team" in avoiding the element of "debating for decision only" and places a premium on sincere extempore speaking as well as platform resource in meeting opposing argument. This form was used without great strain on undergraduate debaters in Western Reserve debates with Oberlin, George Washington, New Jersey Law School, Princeton, and Harvard Universities.

The arrangement of speakers in the reported debate is as follows:

Affirmative	Negative
1. Almon McCorkle (Oberlin) Constructive Speaker	2. Aaron Cohen (Western Reserve) Cross-Questioner
4. Maurice Merryfield (Oberlin) Cross-Questioner	3. Sidney Andorn (Western Reserve) Constructive Speaker
6. Alan Green (Western Reserve) Summary Speaker	5. Francis Alter (Oberlin) Summary Speaker

This discussion was held before the student body of Lakewood High School, Lakewood, Ohio, February 26, 1929. John N. Adams, a graduate member of Delta Sigma Rho, served as "expert" judge. His decision was for the Negative. The shift-of-opinion of the audience was also favorable to the Negative in a ratio of three to one. The result is based solely on the changes in opinion of those who handed in ballots. Mr. Ralph A. Colbert, Graduate Assistant in the Department of Speech, Western Reserve University, served as presiding officer.

For this report of the debate, including this introductory note, briefs and bibliography, acknowledgement is made to Professor W. A. D. Millson, Director of Debating of Western Reserve University.

BRIEF

FREEDOM OF SPEECH

AFFIRMATIVE

The principle of complete freedom of speech and press on economic and political questions is sound, for

I. Complete freedom of speech is essential to democratic government.
   A. Free discussion has enabled the people to advance in economic and political fields.
      1. Free discussion made possible the civil service reform.
      2. It led to the Direct Primary.
      3. It led to the abolition of slavery.
   B. The suppression of ideas destroys the function of popular discussion in arriving at the truth.
      1. Suppression of ideas prevents exchange of information.
   C. Complete freedom of discussion prevents violence and public disorder.
      1. Violence is caused by suppression of organized groups.
         a. The only alternative left for those who wish a change in the existing order is violence.
            (1) Sacco and Vanzetti sympathizers throughout the country, when denied the right of peaceful assembly, rioted and caused disorder.
            (2) Violence occurred when speech was restricted in Paterson, New Jersey; Vintondale, Pennsylvania; and in Colorado and Ohio mining towns.

II. Complete freedom of discussion is sound even in wartime.

A. Minority criticism is of great value during time of war.
   1. It could point out inefficiencies in the prosecution of the war.
      a. Had they been allowed to speak, newspaper editors could have shown that $640,000,000 was spent in building airplanes and not a single one reached France in 1918.
      b. Financiers could suggest more practical means to finance the war without being imprisoned for speaking.

B. It is not dangerous.
   1. When a country is fighting in self defense its people react against those attacking it.
      a. This is the natural result of the instinct of self-preservation.
      b. This was true in England during the war when Mrs. Snowden held five hundred peace meetings without molestation.

III. Restriction of freedom of speech leads to injustice.

A. Injustice is inherent in all methods of enforcing restrictions.
   1. When judges restrict they arbitrarily suppress a speaker merely because they disagree with his opinions.
   2. Legislature codes are too inflexible to be just.
      a. The Minnesota law allowing judges to suppress any defamatory newspaper resulted in the suppression of the Minneapolis Weekly Post which had been devoted to an exposure of criminal conditions.
   3. The only other alternative, the setting up of commissions in every village and town in the country, results in the injustice of bureaucracy.

B. Any limitation on freedom of speech permits officials arbitrarily to discriminate against those with whom they disagree.
   1. The limitation serves as an excuse whenever the official wishes to suppress an individual.

NEGATIVE

INTRODUCTION:

A. Restrictions on speech have been evolved by society as a logical means of protecting itself.

I. Certain restrictions on the freedom of speech are necessary in times of peace for the protection of lives and property.

A. Unrestrained freedom of speech has caused destruction of life and property.

1. The East St. Louis Race Riots were precipitated by agitators.
2. The Pittsburgh Round House Riots were instigated by irresponsible speakers.

B. Wherever the complete freedom of the individual has resulted in destruction of life or property, it has been restricted.

1. This is essential to the maintenance of the individual liberty of the average man.

II. Certain restrictions are necessary in time of war.

A. The paramount duty of the government is to protect its people and its institutions from aggression of a foreign nation.

1. The United States has acted upon this principle since its inception.
   a. In every war, it has taken those measures essential to its preservation even to the extent of taking away individual liberty entirely.
      (1) It forces all able-bodied men to engage in military service.

B. Unlimited freedom of speech hinders defense during a war.

1. It allows speakers and writers to break up the united front of the people.
   a. They urge men not to enlist.
   b. They obstruct the sale of Liberty Bonds.
   c. They urge people to evade the draft.
   d. They urge others to burn munition factories.

III. Necessary restrictions cannot be abolished by law or education.

A. While abuses of restriction of free speech can be corrected by educating officials to see they are not necessary or beneficial.
   1. Yet this type of restriction can only be legislated or educated away by demonstrating to the officials that their arbitrary actions are ineffective and unnecessary to preserve the order of things in which they believe.
      a. Regardless of legislative guarantees of freedom of speech, officials can make use of other causes and restrict speech with impunity.
         (1) This was true in the case of Sacco-Vanzetti sympathizers in Cheswick, Pennsylvania where a parade was broken up because there was no parade permit.
         (2) Officials can take advantage of many such laws—i.e. those prohibiting spitting on sidewalks, jostling in a crowd, permits to parade, and permits to meet.
      b. Officials will make use of these laws in order to restrict speech so long as they believe they are protecting that in which they believe.
         (1) This is the natural result of the instinct of self-preservation.

B. Restrictions necessary to protect the nation during a war and to protect life and property in peace, will be imposed regardless of law.
   1. The instinct of self-preservation will operate to protect the country and its people in all emergencies as it has done in the past.

FREEDOM OF SPEECH

WESTERN RESERVE UNIVERSITY
and
OBERLIN COLLEGE

LAKEWOOD HIGH SCHOOL CHAIRMAN: The debate this afternoon is between Western Reserve and Oberlin. This is the first college debate that we have had here at the high school and I think we will find it somewhat different from our usual debates. The teams have come to the high school by the invitation of the Debate Club and the high school and I believe if you will give your serious attention to the question, you will be doubly repaid.

The chairman for today is Ralph A. Colbert of the Public Speaking Department of Western Reserve.

CHAIRMAN
Ralph A. Colbert

MR. CHAIRMAN, MEN AND WOMEN OF LAKEWOOD HIGH SCHOOL: I want to thank you for your very kind invitation to be here this afternoon and for this opportunity you are affording us to welcome again our good friends from Oberlin College and to meet them in this intercollegiate debate.

The question as you know and as you can readily see from the program is as follows: Resolved: That the principle of complete freedom of speech and press on political and economic questions is sound. This is the question of free speech.

Now at all of these Reserve debates we expect the audience to cooperate with us and play an important role, and I hope you will oblige us by cooperating as follows: Each of you has in your possession a ballot. I wish you would inspect it at the present moment. You will find above the part marked "Before the Discussion" the following: "This form is filled

by man, woman whose age is—" I wish you would all fill in that blank. Now I want you to understand this is not required for mere idle curiosity, but these ballots are important to us both in classroom work and research work which the Department of Speech is now conducting at Western Reserve University. We want to know whether the ballot which you have is in the possession of man or woman and we want to know how old you are. You see we want to tell how the various ages and sexes react to the arguments of the debaters as they are presented from the platform and only by having the various "information blanks" filled in shall we be able to arrive at any conclusions.

While you have your pencils in hand, I am going to repeat for you again the question under debate. Resolved: That the principle of complete freedom of speech and press on political and economic questions is sound. Now in the part of the ballot marked "Before the Discussion," you will find a place to indicate your present belief on that question. That is, if you believe that the principle of complete freedom of speech and press on political and economic questions is sound, indicate that belief on the ballot by marking the space next to the word "yes." On the other hand, if you don't believe in the proposition as stated, indicate that fact by saying that you don't believe it. Mark the ballot "no." On the other hand, if you are undecided, indicate that also on this ballot. Now do that right away. All of you, please.

Now that you have done your share for the time being, I am going to introduce the speakers for the afternoon. The plan of debating which will be conducted this afternoon is perhaps new to most of you, what we call "The Reserve Plan," a combination of the Oxford and Oregon systems of debating. There will be a main speech and after that a "cross-examination" of the speaker by one of his opponents. And then a summary speech by the third man on each team. You will notice also that this is in the fashion of a split team debate. Each team consists of two members of the various colleges and one member of their opponents.

The first speaker on the Affirmative will be Mr. McCorkle of Oberlin.

AFFIRMATIVE CONSTRUCTIVE SPEAKER

Almon McCorkle, Oberlin

Mr. Chairman, Students of Lakewood High School: We debaters from Oberlin are glad of this opportunity to be here this afternoon and to meet our friends from Western Reserve University.

My presence on the platform this afternoon may seem a serious challenge to the advisability of accepting the principle of free speech. After you have listened for a few minutes to the Bolshevistic and radical statements I will make, you may wish to throw me out, but you cannot do so according to the position the Affirmative take, which is this: I should be allowed to speak to you regardless of what I say or the manner in which I say it.

The doctrine of complete freedom of speech is fundamental in the history of this country. There are many historic documents which have placed great stress upon this cardinal principle. Among the more significant are the Declaration of Independence; the active act of the Virginia Legislature of 1786 in establishing religious freedom; and the American Constitution of 1789.

The American people prize their civil liberty so highly that they insisted upon the adoption of the first ten amendments to the Constitution, or the Bill of Rights. In fact the past history of this country has revealed the eagerness of the people adequately to safeguard and protect their civil liberties and, especially, complete freedom of speech and press.

What is the tendency at the present time? The tendency which began in 1915, if continued, will result in the complete abolition of all privileges of free speech. What evidence do I have for this? First, there is the Espionage Act of 1917 and the Sedition Act of 1918. There were thirty-four sedition statutes and criminal syndicalism laws passed during the war, not a single one of which has been repealed since the Armistice. There are police regulations and municipal rules restricting free speech in many ways.

There is the arbitrary power of the post office in forbidding the use of the mails to publications and pamphlets, and finally there are court laws forbidding the indiscriminate use of

injunction in the matter of individuals imprisoned for the violation of codes which in themselves violate the principle of free speech. In other words, if this present tendency is allowed to continue it will inevitably result in the complete abolition of all free speech and press.

The principle of complete freedom of speech and press on political and economic questions is sound because it is essential to democratic government. It has been the foundation of the development of democratic institutions in the past. In fact, the very foundation of the American government rests upon free discussion. If the creators of the Constitution had not possessed free discussion, if they had not had the privilege of critically examining the comparative merits of the various forms of government then in existence, we should not have secured a democratic document such as the American Constitution.

Practically all modern democratic institutions have been made possible through free speech. I can describe only a few of these. Take civil service, for example, asking agitation for civil service reform was made possible by freedom of discussion. Certain minority groups in various parts of the country agitated for this reform. As a result of the civil service agitation therefore there are civil service commissions in practically every state and in the national government.

Then the direct primary, which certainly is a democratic institution, is the result of agitation by minority groups who were privileged to agitate because of the freedom of discussion. As a result, a great many of the states have adopted the primary method in election in preference to the older.

Freedom of discussion is essential to the formation of an intelligent public opinion. We can have an intelligent public opinion only when freedom of discussion is permitted. It is an axiom that there is an element of truth in every opinion as well as an element of falsehood. We can secure a democratic public opinion only when many opinions are available and the public can secure and point out the element of truth in each.

Freedom of discussion is also sound because it prevents violence and public disorder. I should like to point out a distinction between the mere expression of opinion and the violence which might result from overt acts. By overt acts I refer to

such an act as the destruction of property and loss of life, which things are penalized by the Penal Codes of the states and of the United States. This we discourage, and any man who commits an overt act in violation of the Penal Code must be punished. This, however, is different from the expression of opinions which are harmless—freedom of discussion.

It is human and natural that all individuals should desire to express those opinions which are most personal and precious to them. If a man cannot express opinions to his neighbors and associates which he prizes most highly, a certain inner dissatisfaction will result. If this restriction wrought by governmental means is continued, violence is bound to ensue.

Now there are many organizations in this country today which exist for the sole purpose, the sole aim of advocating changes in social and political structure of this country. This is the sole reason for their existence and their policy rests upon it. Now they will protest against the unfair action of official legislation either by peaceful means or by violent means. If the privilege of free discussion is denied them, the only alternative is violence. There are many examples of this. Take the Sacco-Vanzetti cases which occurred in 1927. In Boston many meetings were attempted by groups. Each was broken up by the police authorities. In the clash between the police and the individuals attempting to hold the meeting there were serious injuries resulting.

In Chicago seventy persons were arrested for passing out Sacco-Vanzetti handbills during a strike. Many of these people were injured as a result of a clash between the police and Sacco-Vanzetti sympathizers. Perhaps the most outstanding case is that occurring at Cheswick, Pennsylvania, on August 22, 1927. Over two hundred men, women and children had assembled in a vacant lot some distance from the public highway for the purpose of protesting against the "unfair and unjust" trial accorded Sacco and Vanzetti. Before the meeting had continued for long, the state troops arrived and drove the people to their homes. Some refused to leave and they became boisterous, and gas and clubs were the instruments used. One man who had been cruelly beaten by a state trooper, shot him in self-defense. If these individuals had been allowed to meet peaceably and discuss the Sacco-Vanzetti case without the interference of state troops, violence would have been eliminated.

Allow me to quote an opinion issued by the Justices of the United States Supreme Court in the case known as "United States versus Cruikshank." The opinion reads as follows: "The very idea of a government, republican in form, implies a right on the part of its citizens to meet peaceably for consultation and free speech as to public affairs, to petition for redress of grievances." In fact, in nearly every case in which the people are denied the privilege of free assembly and free discussion, violence occurs.

I might mention and discuss the violence occurring at Paterson, New Jersey, where a strike existed for some months. There was violence at Paterson, New Jersey, Vintondale, Pennsylvania, and in many mining towns in Colorado, Ohio and Pennsylvania as a result of restriction of free speech and assembly. In other words, only by allowing freedom of discussion, freedom of assembly and freedom of press can violence be eliminated.

Then there is the question of war. Freedom of discussion on political and economic subjects is sound even in wartime. It is generally acknowledged that minority criticism of governmental action is of great value during time of peace; it is even more essential during time of war, because upon the effectiveness of governmental policies the safety of 120,000,000 Americans depends. Now, during wartime we wish to secure the soundest course of national action. We can do this only by allowing minority criticism of government officials and governmental policies.

During war time the officials are so busy in carrying out routine duties and in pursuing war policies they have no opportunity for critically examining their own policies or discovering their inherent weaknesses and defects. It remains for certain minority groups to point out these defects so the war policies may be remedied and result in the more successful conclusion of the war.

Let us take the last World War and point out the minority groups (concerning which) if they had been allowed complete freedom of speech, the war policies would have been greatly improved. It would have been extremely valuable if any newspaper editor had dared point out the fact that $640,000,000 had been spent in the construction of airplanes and yet in 1918 there was not a single airplane in France. Why was it that

newspaper editors dared not mention this fact and call the attention of the American people to the negligence of the War Department? It was the decision of an act, the Espionage Act, passed by National Congress which made such criticism criminal and subject to prosecution. According to the Act, such criticism of governmental policies would have been considered as disloyal and the newspaper editor might have been imprisoned for having made a constructive criticism.

During the war several eminent financiers suggested that heavier taxation was a more practicable means for securing larger sums of money for carrying on the war. They suggested this in preference to a Liberty Loan because Liberty Bonds bring uncertain sums of money. These men were conscientious in their objections and suggestions, but under the Sedition Act they were fined and imprisoned for disloyalty. An outstanding case occurred in Minnesota during the last year, in which a man by the name of Gilbert was fined and imprisoned for the violation of the Minnesota Sedition Act. In addressing a non-partisan meeting he mentioned the fact that the United States had not entered the World War in order to make the "world safe for democracy." This was the phrase which he used. Because of that he was fined under the Minnesota Sedition Act. This is an example of the opinions differing on why we entered the World War. The opinion was harmless and could not possibly have interfered with the military activities of the government.

Now, perhaps, the Negative may insist that unanimity of opinion is necessary during time of war. I have pointed out the value of minority criticism. Minority criticism is not harmful but is of great value during time of war.

And finally, the principle of restriction is wrong because methods of applying it result in injustice. Every means by which free speech and free press are restricted results in injustice to the parties concerned. Now, the most common means employed is that of restriction by the judiciary. Judges may restrict free speech, deny the privilege of publishing articles in the press on the basis of possible injury or violence. Allow me to quote Mr. Justice Holmes, Justice of the United States Supreme Court, in connection with violence which may result from the suppression of opinion. Mr. Justice Holmes said in connection with the Gitlow case, decided in 1927, "Fear of

serious injury cannot alone justify suppression of free speech and assembly. Men feared witches and burned them." Not only that, judges may refuse the privilege of free speech and the privilege of addressing public audiences on the basis of bad tendency and criminal intent.

Again I would like to quote Professor Chafee of Harvard Law School, "Bad tendency and presumed intent have been the tests of criminality, tests which are wholly inconsistent with freedom of speech." In other words, if you allowed the judges in this country arbitrarily to determine who shall speak and who shall not on the basis of bad tendency and presumed intent, all privileges and advantages of free speech would be lost. They no longer exist.

In connection with this, by far the great majority of cases in which individuals are not allowed to hold public meetings, are not allowed to publish articles in the press, are the result of injustice and preconceived opinion on the part of the judge. In other words, if they know or believe they know just what a man will say, if the opinions of a particular speaker are not in conformity with their own, they will refuse to allow him to speak merely because his opinions do not coincide with their own. In this case you see that many opinions, perfectly harmless in expression and which could not result in violence, are denied expression.

Then the second means of restriction of free speech is by means of legislation. If free speech is restricted by legislation, we have a definite legal code which is not sufficiently flexible to include all possible cases arising in connection with free speech. Now what is the injustice that may arise under restriction by these first two named means? Take, for example, a law passed in Minnesota in 1925. In 1925 the legislature of Minnesota enacted a law which gave to the judges the privilege of permanently suppressing by means of injunction and without trial by jury, any malicious or defamatory newspaper. Acting under this statute in 1927 a judge in Hennepin County permanently suppressed the Minneapolis *Weekly Post.* This newspaper had been devoted to an exposure of crime conditions in Minneapolis and a criticism of public officials, but merely because the opinions printed in this paper were not in conformity with those of the judge, this newspaper was permanently suppressed. The only other means available is

restriction of free speech by means of commission. If this plan were adopted, you would have a commission in every village and municipality in the country.

And finally the question is, "Where are we going to draw the line? We must have complete freedom of speech and all privileges resulting from that, or the absolute abolition of all free discussion. If you draw the line, you allow judges or legislatures arbitrarily to discriminate and prevent the expression of a great many opinions of inestimable value to the country.

The position of the Affirmative is characterized in part by the saying of Voltaire, who in his comments on Rousseau's "Social Contract," said, "I do not agree with a single thing you say. I will defend to death your right to say it."

CHAIRMAN COLBERT: There will now be an opportunity for cross examination in which Mr. McCorkle will have to answer these questions. Mr. Cohen of Western Reserve University will conduct the cross examination for the negative. Mr. Cohen.

NEGATIVE CROSS-QUESTIONER

Aaron Cohen, Western Reserve

MR. CHAIRMAN, LADIES AND GENTLEMEN: Mr. McCorkle, as I understand your case, you based it entirely on three arguments. First, freedom of speech is essential to democratic government; second, violence will result; and third, the principle of restriction is wrong. Mr. McCorkle, can you tell me whether freedom of speech in your knowledge has ever worked at any time at any place in the history of the world?

MR. MCCORKLE: So far as I know there has never existed complete freedom of speech and because of that, violence has occurred in a great many instances where it would not have occurred had there been freedom of speech.

MR. COHEN: Can you tell in a few words why this condition of absolute freedom of speech has never come about?

MR. MCCORKLE: What is your opinion?

MR. COHEN: I repeat. I am asking you. What in your opinion is the cause throughout the history of the world for a lack of absolute freedom of speech?

MR. MCCORKLE: Perhaps that is a selfish one. The governments have refused to allow their own agents to be subject to censorship and criticism. It is only human.

MR. COHEN: Not only on the part of governments but on the part of individuals?

MR. MCCORKLE: Restrictions of freedom of speech are passed by government.

MR. COHEN: It is inherent selfishness that has caused throughout the history of the world this total lack of freedom of speech?

MR. MCCORKLE: Well, perhaps.

MR. COHEN: Now, Mr. McCorkle, in the various examples you gave in regard to the injustice of various restrictions of speech you named the Sacco-Vanzetti meetings in Chicago, those in Cheswick, and Paterson, New Jersey; and in reading through those you found no doubt that restrictions were made by authorities not upon any law restricting freedom of speech but on some trumped up charge. Hasn't that been the case?

MR. MCCORKLE: It is in some cases, yes.

MR. COHEN: Such as speaking without permits, marching without a permit or walking on the grass, jostling in a crowd, or spitting on the sidewalks. Charges like those have been the principle used to restrict freedom of speech, unreasonable as they are. Isn't that the case?

MR. MCCORKLE: That has been true in a great many of the cases, but a great many have been imprisoned just because of the violation of the state codes of state laws.

MR. COHEN: All right, "violation of state codes"—almost any charge in order to restrict them. Hasn't that then been the history of these restrictions?

MR. MCCORKLE: Perhaps.

MR. COHEN: Now, under your freedom of speech, suppose we should have tomorrow absolute freedom of speech. What is going to prevent these authorities who have restricted upon any trumped up charge of spitting on the sidewalks, of marching without permits, of jostling in a crowd, what is going to prevent them from preventing speech by the very same excuse?

MR. MCCORKLE: You mean they will have to use violence to restrict others?

MR. COHEN: They are going to use a trumped up charge to prevent them from speaking on any subject, upon some excuse other than speech itself.

MR. MCCORKLE: You think that a trumped up charge will bring about this effect?

MR. COHEN: You think so according to the cases you cited.

MR. MCCORKLE: In addition they have used authority not granted to them.

MR. COHEN: In other words, these laws are those which we can't eradicate. We can't eradicate such a law as punishing a person for jostling in a crowd, as that punishing people for walking on the grass—things like that. And then, when you have your "freedom of speech" these authorities will continue in the self-same manner to trump up a charge and restrict speech whether we have "absolute freedom of speech" or don't. That seems apparent?

MR. MCCORKLE: You admit it isn't being applied as justice?

MR. COHEN: It can't be applied apparently at all. Doesn't that seem to be the conclusion? It seems, then, you can't have this absolute freedom of speech, because authorities will get around it. And now continuing in defending the stand of your case, you tried to eliminate overt acts such as destruction of property. You said you wanted to discourage that sort of thing. Mr. McCorkle, have you ever heard of "complete freedom of speech" that is not "complete" freedom?

MR. MCCORKLE: Just what do you mean?

MR. COHEN: Can there be complete freedom of speech and yet be incomplete?

MR. MCCORKLE: Yes.

MR. COHEN: You can't have the whole pie and have part taken away. You can't have the whole pie. That is very obvious. According to the question, you are arguing for absolute freedom of speech on all political and economic matters without any conditions. Now, suppose these overt actions were caused by people speaking on political and economic subjects. Aren't they contained in this question?

MR. MCCORKLE: In that case your authorities can intervene and punish them for the violation of the Penal Code. You draw the line—

MR. COHEN (interrupting): Isn't that included in this question if people speaking on political and economic matters cause destruction of property, commit crime?

MR. MCCORKLE: If you attempt to restrict speech and that becomes the basis of possible violence, you do, as I pointed out, allow arbitrary judges to intervene.

MR. COHEN: Possibly not violence occurring, but something different. We will lead up to that shortly. When you were speaking of democracy you told us the primary aim of a democracy. The primary aim of any government is to enforce law and order. That is paramount in any government, is it not?

MR. MCCORKLE: Yes.

MR. COHEN: You will also admit that no abstract right or freedom should stand in the way if there is danger of life or liberty, should it?

MR. MCCORKLE: Not absolute, if you are referring to complete—

MR. COHEN (interrupting): You will get that later. Should it stand in the way if it is shown to endanger life, liberty or property?

MR. MCCORKLE: It depends on the principle.

MR. COHEN: You told me a minute ago that that is the paramount aim, therefore, any obstruction, opinion or right must give way if life and property are in danger. And also if we can show you that freedom of speech endangers life, liberty and property, it must also be restricted if it really endangers life, liberty and property. If we can show that, that would follow, wouldn't it?

MR. MCCORKLE: My position was that freedom of speech would prevent the violence.

MR. COHEN: Will you please answer my question?

MR. MCCORKLE: Will you repeat it?

MR. COHEN: If the principle of freedom of speech can be shown to endanger life, liberty and property, shouldn't this also be restricted? If that can be shown? That follows along from your preceding admission.

MR. MCCORKLE: Can you point out a case in which freedom of speech endangered life?

MR. COHEN: That isn't the question asked you. If it can be shown, it should be restricted, shouldn't it? That would follow, wouldn't it?

MR. MCCORKLE: Surely.

MR. COHEN: Now being a law-abiding citizen if you saw someone kill a person, you would punish that man?

MR. MCCORKLE: That would be punishable by the Penal Code.

MR. COHEN: If one man murdered or destroyed property, you say that is punishable?

MR. MCCORKLE: Certainly.

MR. COHEN: Then when a man persuades a group to commit some crime, he is responsible on the basis of possible results?

We haven't yet come to the act. This is merely a criminal phase. If a man commits or persuades another to commit any violence, he should be punished and he has been punished and imprisoned according to the laws of the state. Doesn't it follow then, that if one man persuades a group to perpetrate some crime he should also be restricted?

MR. MCCORKLE: I believe our time is up.

CHAIRMAN COLBERT: You will next hear the case of the Negative as presented by Mr. Andorn of Western Reserve.

NEGATIVE CONSTRUCTIVE SPEAKER

Sidney Andorn, Western Reserve

YOUNG LADIES AND GENTLEMEN: You know we debaters don't have much of an opportunity to speak before high school groups and while I was wondering about what I could say to a group of high school people I went to see Jack Raper of The Cleveland Press, who has spoken before hundreds of school groups. I said, "Jack, what shall I say to them?"

He said, "Well, I will tell you, Sid, you tell those girls they are the best looking group of girls you ever saw and you tell the boys they are the most intelligent group you have ever seen assembled. It will go over."

I said, "Maybe it will in some little 'hick' school, but Cleveland high schools are different. They won't fall for that 'bunk.' You might say that in an adult group but you can't in a high school."

But I do want to take this opportunity to say you are the best looking group of young ladies I have ever seen. And this is the most intelligent group of young men I have ever seen, and we are glad to be here this afternoon.

After hearing a discussion such as we have been hearing here we may be of the opinion that this is a serious question.

but if men couldn't settle that question in the Lord knows how long, how can we do it in an hour's debate? We can't do it. We don't intend to. It isn't a serious thing. All we can do is to present the facts as completely and clearly as we can and try to arrive at some conclusion.

As Mr. McCorkle said, he should be allowed to say what he feels like. Mr. McCorkle did say what he felt like and no one threw him out. We are not so restricted in the country as Mr. McCorkle would have you believe. We have a pretty good principle of freedom of speech in this country.

That reminds me of a little story. There were a couple of colored men. One said to the other, "Rastus, would you all rawther be in an explosion or in an accident?" The other scratched his head and said, "Well, I tell you, I would rawther be in an accident than an explosion."

"Why would you rawther be in an accident than an explosion, Rastus?"

"Well when I am in collision, here I is. If I is in a explosion, where is I?"

What I want to know is this—where is the Affirmative?

Mr. McCorkle tried to bring out the fact that we have such restrictions in this country today. If we have such restrictions how did we come to get the Civil Service Act and the Primary Elections if people were not allowed to talk? We might even desire this freedom of speech, but not complete freedom of speech. We had restrictions and the same kind of restrictions as we have today and yet in spite of these restrictions we secured these good measures. Well, we have enough freedom to bring them about. Nobody need get gray hairs over the restrictions we have today. The laws we have today were never set down by any one particular group of men and organizations. They grew up. Their evolution was a restrictionary process of civilization and as society increased people made the restrictions for the individual in order that the members of society themselves might enjoy greater life and liberty.

As Mr. McCorkle admitted during the cross examination, never has any country in the history of the world had complete anything. You can't have it. Even Robinson Crusoe was restricted by Friday.

Society in order to preserve itself must have restrictions. There are certain times when such restrictions become

essential, when such restrictions are more necessary than at other times.

It is because we believe these restrictions essential, that we of the Negative this afternoon believe we are adopting a common stand when we say that certain restrictions are necessary in time of war in order to protect our government. When certain restrictions are necessary in time of peace in order to protect your lives and property and when we say such restrictions are essential, such restrictions can never be done away with. The Negative bases its case against this theoretical and untried and new principle of complete freedom of speech.

Let us look into the conditions. First, some of the restrictions are necessary in time of war. We are not in favor of war. I am not saying we want war. We don't like it any more than the Affirmative. We are even more opposed to it. We know war is a bad thing, but we aren't so altruistic and idealistic as not to know we will have another war. And when you are going to have another war you have got to be prepared for it and do what has been done in the past. Preparation will enable a nation in war to put forth its best efforts regardless of how it got in and why it is there.

Now, for instance, you know in war times there are only two parties, the victor and the defeated—those who win and those who lose. In order that a nation may not only win but come out as good as it went in, and end the war as quickly as possible, and make it possible for that nation to put forth united ability trained upon the one thing, the winning of that war is the nation's duty. That might sound materialistic, but it is common sense. That might sound as if we are in favor of winning the war. I think anybody who says he isn't is a little foolish.

Suppose we are in war. Take a highly practical case. Suppose we don't believe in Liberty Bonds. Suppose we are allowed freedom of speech and talk about evading the draft and blowing up munition works and we break up this united front. Suppose we have boys fighting on our coast protecting the government and then they hear all this agitation about not enlisting, don't go into the draft, blow up the munitions, and instead of aiding those boys you are doing everything you can to restrict them. The obvious result would be the supplanting of the democracy of ours by some other government than our

own. In time of war all a nation's resources and efforts must be consolidated and concentrated on one thing—to win the war—and only by consistent restriction and suppressing agitation at such a time can a nation put forth the united front strong enough to come out of the war victorious.

As I said before, that might sound a little materialistic, waving a red flag before you and saying, "Let's have war." While there is a possibility of war isn't it common sense to look back and see what the nations all through history have done at times of war and how they have restricted and held down agitation and done everything they could to create the united front and so the nation could come out victorious. Civilization proves that; history proves it.

Second, now in times of peace. Normally we must have some restrictions in order to protect your lives and in order to protect your property. Even in times of peace there are certain agitators, certain people, who in moments of internal dissention and strife seek to commit violence and murder, and such destruction must be punished and the man who invited such destruction must be punished also. Mr. McCorkle said no, he doesn't believe he should be. That is contrary to everything that has been established. The man inciting such destruction should also be punished even as he that commits the crime. That law wasn't laid down by any particular group at any particular time. That is a principle which came up from English common law, which grew up in England through a process of evolution. The English people established a law that the man who incites somebody to violence is just as guilty as the man himself. That is indirect restriction, but it is there. That is the law we have in this country. I think from just a common sense standpoint we find that if a man does incite a man to action and violence that man should be punished as much as if he himself committed that violence.

Now you might wonder how this comes about. Let us look at a few examples, cases of violence resulting from speech. In East St. Louis about a dozen years ago there was a serious segregation problem. The colored people were segregated in one place while the whites were in another section. At the very same time a colored man committed a crime upon a white woman. Agitators went into the white section and said, "Get revenge on that man." The whites were roused anyway

because of the economic situation. The whites went into the colored section and violence resulted. Agitators went into the colored section and said, "Don't let the whites do what they are doing." And the colored people waged war and violence on the whites, and according to the newspapers at that time, because of this agitation these riots were prolonged twelve weeks longer than they should have been. Hundreds of thousands of troops were called or two hundred more people would otherwise have been killed solely because agitators prolonged and aggravated these riots and internal dissention in East St. Louis.

That is one interesting example. I cite the case of the Pittsburgh Round House where there was a strike. Agitators incited the people to violence with more destruction of life and more destruction of property and the Affirmative say that they do not believe that a man who incites a mob to violence should be punished, and they believe it a sound principle to do away with violence. I really wish Mr. McCorkle would explain a little more clearly to me how they are going to do that. A man who incites violence is just as responsible for that violence as if he himself committed it. Isn't it just common sense to believe that a man who incites a mob to violence and knows he is not held responsible will continue to incite future mobs to greater and greater violence? I wonder how they come to their conclusions.

Then we come to the third contention of the Negative this afternoon and that is in time of war some restriction is necessary in order to protect our government; not only in time of peace is some restriction necessary when there arise crises and internal dissention, not only at such time should the speaker be punished along with the people who commit the crime, but even if these essential restrictions can never be done away with.

I have gone back into history on a number of occasions and tried to show this evolutionary process and out of history have come these restrictions. No one group sat down at any one time and said, "We will restrict this thing." I don't know whether there were any meetings for restriction purposes. These restrictions grew up with society, and as it developed there were more restrictions in order that the people might enjoy greater freedom, in order that the individual might not incite mobs to destroy their homes and in order that the government might

be preserved, these restrictions grew up slowly and were fundamentally implanted in the very system of our government and in other European governments.

Because these restrictions did grow up my friends seem to think because they are there we can easily do away with them. Now we have the judges and the judges restrict people on the "results of free justice," to quote his own words, we shall "arbitrarily" discriminate. They ask us what is the use of injunction, and they tell us about a case at Cheswick, Pennsylvania and others where they passed handbills, all of which is very true, all of which things are abuses not of the privilege of restricting speech or free speech, restrictions not of that sort; these are abuses of other things such as spitting on the side-walk and jostling on the side-walk. They didn't tell you why the judges were able to put the people who passed the handbills in prison. They didn't tell you that at Cheswick, Pennsylvania, these people were attacked by the state troops. The reason? Parading without a permit. Judges can always find a subterfuge to restrict speech if they want to. The Affirmative think we "should" have complete freedom of speech. Does that mean we "will" have complete freedom of speech? Does that mean that all the judges are going to look around for subterfuges as means of preventing other people from saying what they don't want them to? Can't they stop them on the grounds that they are jostling in a crowd, not because of what they are saying but because they didn't get a parade permit?

Now then, they think we ought to be able to do away with all the laws so the judges won't be able to find a subterfuge. I don't think they will do that, but that is the only way they could get around it. This use of subterfuge, this restricting of speech, can't be done away with.

Now we are willing to offer something constructive. We think the judges should be educated, should be informed of the fact that there really is no harm in what is being said. If they understand, they will let the people talk until they are blue in the face so long as speech does not cause harm to the United States, does not result in death and destruction. Outside of that, let them talk, but the reason these judges are restricting, the reason is the same as that of the people, that primary instinct in the individual, an instinct of self-preserva-

tion within the judges. They think this way: "If I don't show that man that he had to be stopped talking in some way, it will probably give birth to violence, give birth to destruction and that man will probably destroy my position and my government," and he uses a subterfuge of having no permit.

But there are certain essential restrictions which cannot be educated away, certain essentials of restriction which we do not want to educate away. These are the restrictions to prevent breaking up the united front in time of war. These are the restrictions of agitation, such as "don't buy Liberty Bonds," "don't enlist," "evade the draft." When these men are aroused their primary underlying instinct of self-preservation manifests itself more strongly than ever before. At such a time all the laws in the world will not prevent restriction.

We feel in the second place you cannot educate or legislate away these laws which say you should restrict a man at the time of speech when his speech results in violence, in death and in destruction. On these three counts the Negative believe we are adopting a stand based upon history. We are adopting a stand which is favored by the common sense of nations when we say in time of war, when a united front is absolutely vital to the preservation of our form of government, then we should restrict it; when we say in time of peace, of certain agitators instigating violence, death and destruction, these agitators should be restricted in order to protect your lives and your property; when we say in the third place we do not believe these essential restrictions can ever be wiped out. I should like to ask my friends of the Affirmative this afternoon in closing kindly to show us how they propose to nullify the instincts which are imbedded in human beings so there will not be any restrictions in time of war, so there will not be any restrictions in time of peace. Then if they can show us that, then they must show us how complete freedom, this untried and new principle, will have an advantageous effect and will not result in destruction of government and life and property.

CHAIRMAN COLBERT: There will now be a cross examination conducted by Mr. Merryfield of Oberlin. I am making one concession to Mr. Andorn and that is that his statement will go unquestioned about your being the most handsome and intelligent group that he has ever addressed.

AFFIRMATIVE CROSS-QUESTIONER

Maurice Merryfield, Oberlin

You prefer a "collision" to an "explosion," do you not?

MR. ANDORN: Yes, I would.

MR. MERRYFIELD: I am suggesting perhaps that you "collided" into the question and "exploded" it, also.

MR. ANDORN: That is a matter of personal application.

MR. MERRYFIELD: Answer yourself.

MR. ANDORN: I don't know.

MR. MERRYFIELD: Yes. Are you sure?

MR. ANDORN: I don't know what this has to do with the question.

MR. MERRYFIELD: I am merely working up with respect to the question at the present time. I want to mention first the question you brought up concerning war. I believe that you emphasized a "united front" to a great extent and said, "We have to have a united front to win a war. History has never shown any wars in the past that didn't have a united front that were successful."

MR. ANDORN: Yes.

MR. MERRYFIELD: May I ask, to come directly to the point, did you think that the stand taken by the North and the South was entirely in unison on both sides?

MR. ANDORN: That is why we had the Civil War.

MR. MERRYFIELD: How come the North happened to be victorious? It has been shown there were many dissenting factors in the North.

MR. ANDORN: Were there dissenting factors in the South?

MR. MERRYFIELD: Do you take exception to that?

MR. ANDORN: No.

MR. MERRYFIELD: You don't. Now is it not possible that the great benefit of self-preservation and self-protection can be maintained in some other way than by being out of harmony with your main right?

MR. ANDORN: Yes.

MR. MERRYFIELD: Now suppose we take an example. Suppose a war comes along and someone happens to be in government office. He thinks, "Well, now, the next time I run for office I should have something to show in my past record,

something to bring out, nice and colorful to spring in my campaign, so we will have a war. We trump up a little cause and sprinkle it over with emotion. Now all you people build a united front and get behind it." I suppose that would mean to put everybody in jail that was ever in any way anxious to avoid the war and to show the real cause?

MR. ANDORN: As far as "united front" is concerned.

MR. MERRYFIELD: Even though it was started over a few emotional words?

MR. ANDORN: I don't think a few emotional words would start a war.

MR. MERRYFIELD: You think that war is always justified and is not to a certain extent started by politicians? You surely know that war is not always just and not always sanctioned by the people, by the majority of the citizens, and that the only possible way of discouraging it must be through discussion and not by jailing those discussing it.

MR. ANDORN: I think I mentioned that I was opposed to war as much as you are, but regardless of the cause, we have to have a united front when we are in it.

MR. MERRYFIELD: I am merely bringing out the fallacy which might be brought about by certain politicians. History proves it and the future points unquestionably to it. That would sanction criminal solicitation to any extent whatsoever.

MR. ANDORN: If a certain speaker got up and incited a few agents to violence that man should be arrested, that man should be held responsible for the crime committed by the masses.

MR. MERRYFIELD: Suppose this group here were knitting socks during the war and I said, "Now they are all down there busy knitting. Those socks will never reach the soldiers." You immediately got incensed about that and you had me arrested because I said the socks would never get to the soldiers. You would say to the judge, "He is breaking up our united front—you get that 'united front'." Now would you arrest me?

MR. ANDORN: I would not because no violence was committed by saying the socks will never get to the poor soldiers.

MR. MERRYFIELD: That is up to the opinion of the judge whether to sanction the case and whether violence has occurred or not.

MR. ANDORN: Those are abuses of the system which I talked about and which could be done away with. That refers back

to education. I merely mentioned education as a feasible plan. It has never before been tried and education has done some good.

MR. MERRYFIELD: Does the majority rule usually?

MR. ANDORN: Yes.

MR. MERRYFIELD: It would in a republic at least?

MR. ANDORN: Yes.

MR. MERRYFIELD: Suppose a race riot were started. That would be an injustice to a certain number of people. Suppose before the race riots happened something of violence occurred. The speaker was getting up a tirade and you remarked in your little voice, "Those slums over at the east are very obnoxious. I am repelled by them to a great extent." That would be a mild remark. So afterwards someone came up and said, "Mr. Andorn over there said this," and they marched up to the court and brought in one who had incited this violence, an accomplice to the act. This would be injustice not only to you but it would not benefit the people because they would be afraid to express themselves, being afraid they would be implicated.

MR. ANDORN: No, I don't think so. That is a far-fetched case. That is like the "socks."

MR. MERRYFIELD: You mentioned the East St. Louis race riots.

MR. ANDORN: It wasn't started with such a mild remark.

MR. MERRYFIELD: That isn't such a mild remark to say the slums are pretty bad. It might cause violence.

MR. ANDORN: If I were up on the platform and I said the slums are pretty bad and then violence resulted, I should be punished.

MR. MERRYFIELD: Suppose no violence resulted. You got up and spoke and said we should burn them down, yet nothing happened. I suppose you would be criminally responsible?

MR. ANDORN: No, if nothing happened.

MR. MERRYFIELD: If you advocated violence whether it resulted in violence or not, would you have indirect causation there?

MR. ANDORN: You are telling me what happened under my policy?

MR. MERRYFIELD: I am carrying out your policy to a logical conclusion.

CHAIRMAN COLBERT: Mr. Alter of Oberlin will summarize the negative case.

NEGATIVE SUMMARY SPEAKER

Francis Alter, Oberlin

MR. CHAIRMAN, LADIES AND GENTLEMEN: It was once said and we feel rightly so, that the privilege of free speech was that "freedom of a man to say what he thinks without thinking what he says."

As far as we of the Negative can find out that really is the sum total of the argument of the Affirmative as they have presented it here this afternoon: "All rights reserved." What I am getting at is simply this. If you will look at your programs you will find that the question for debate has the words "complete freedom." "Complete" is in the question for debate. Now according to Merriam's *Standard Dictionary* and Webster's *Standard Dictionary,* the word "complete" means "to bring to a perfected, desired condition or end." The word "principle" emphasizes the idea of a fundamental truth or theory that will work. There is where the Negative and the Affirmative meet on a common ground. The Affirmative have a theory and we of the Negative do not accept their theory because they have not shown us that it will work. Now we are not from Missouri. I believe that all three of us on the Negative are from Ohio, but we should like to have the final speaker of the Affirmative show us how the principle of complete freedom of speech will work. That is what we have been driving at for thirty minutes and they haven't told us yet, but we have patience, the patience of Job, perhaps.

Now, I have a rather unique position. I feel that I have to gather up the scattered bits of argument that still remain. If time permits I should like to start at the beginning and spend a brief space of time on each argument that has been taken up in the debate so far.

Mr. McCorkle told us that the tendency toward the abolition of free speech was in evidence and he cited the decisions of the Sedition and Espionage Acts. Now these were emergency measures. The latter was adopted in time of national crisis,

as you will remember, in the case of the World War. The national peace and welfare of our country were at stake. That was an emergency case. That same speaker quoted to you Justice Holmes, and what did Justice Holmes say? He said, "Restriction of free speech is reasonable in time of immediate emergency," and there you have his case and his authority applied to a negative argument.

Next he stated that freedom of discussion was essential to democratic public opinion, and he is right. Freedom of discussion, but not complete freedom of discussion. There is the same old ground of contention. They are debating freedom of speech and we want them to debate complete freedom of speech, and that is where we demand they come forward and take a definite stand with us.

You were told that gross injustices were done in the case of Sacco-Vanzetti. We agree with them again, but there were other factors entering into the Sacco-Vanzetti case. To state that the attendant violences which came out of the Sacco-Vanzetti case were due to complete freedom of speech, is gross error. There were other factors. One demonstration in the city of Boston culminated in violence in which there was no speaker. There is an instance to prove the argument.

Now that same speaker told us that only by the privilege of free speech and free press and the right peaceably to assemble can we overcome the violence of restriction. Yes, free speech, free assembly but not complete freedom of speech. There again is the essential difference.

I would have you bear in mind that the last affirmative speaker is going to assume this platform and I should like to have you keep in mind these few things which we should like to have emphasized in this debate. So when this burst of eloquence comes forth—because I have already met the gentleman who is following me and know what is coming—I want you to bear these facts well in mind.

The first speaker of the Affirmative told you that free speech is a benefit to a nation in time of war. Now you have just heard the negative speaker who preceded me, and I ask you, "Is it?" Mr. McCorkle told us further that millions of dollars were spent for airplanes that never saw France and he asked if it hadn't been for restriction and had the people known this, wouldn't it have been much better? If he is asking me that

question I would tell him, "No." As a result of restrictions those airplanes never saw France in time of war and undoubtedly those same planes, or a few of them at least, are flying in and out of the Cleveland airport, being used in peace time as a means of airplane transportation. Probably that is where they went. Yet, he objects to having them disposed of for any such reason as that, when they were intended to be used for dropping bombs.

Now, the Gilbert case was cited by Mr. McCorkle. He told you that Mr. Gilbert was convicted of violating the Minnesota Sedition Act. He didn't tell you much about it. He rather skillfully closed that case. What was it? This man Gilbert was standing in front of an army recruiting station persuading men not to join the army. If that isn't worthy enough evidence for convicting a man, I leave it with you.

Now, the Affirmative have asked us where you are going to draw the line. We are not going to draw it at all. The line has been drawn by the Supreme Court of the United States and it is simply this: Let any individual speak as long as he wants to, as long as he is not interfering with the rights of others. As soon as he persuades anyone to commit violence against anybody else, then there is the place to draw the line. Let me remind you that it has already been drawn.

This brings us directly to the culminating argument brought out in the cross examination, namely, we have freedom of speech, freedom of life and freedom of property. I am asking you one question. Would you rather have complete freedom of speech, thereby restricting your pleasures in every other field of life or would you rather have the freedom of speech you now have and have with it "life, liberty and a pursuit of happiness" which is safeguarded by the Constitution of the United States?

Now, in conclusion, it seems the gentlemen of the Affirmative do not know whether they believe or do not believe that criminal solicitation is good or bad. If criminal solicitation is an evil, then the gentlemen cannot argue for complete freedom of speech, because criminal solicitation is a part of your privilege to speak. On the other hand, if criminal solicitation is not a part of free speech, they are in conflict with English common law.

Now, in conclusion, the speaker of the Affirmative who will conclude their case will soon be upon the platform. Let me remind you once again that we of the Negative favor just freedom of speech, first because some restrictions are necessary in time of war to protect our government; secondly, some restrictions are necessary in time of peace to protect your life and your property; and lastly, these essential restrictions cannot be done away with. I thank you.

CHAIRMAN COLBERT: The last speaker this afternoon in the debate will be Mr. Green of Western Reserve University who will summarize the Affirmative case.

AFFIRMATIVE SUMMARY SPEAKER

Alan Green, Western Reserve

LADIES AND GENTLEMEN: After hearing and seeing the performance of Moran and Mack up here on the platform, I thought it was about time wo got back to our knitting even if it is knitting "socks" for the soldiers.

Now, the gentlemen have told us we have been debating an abstract principle. They want to know whether or not this principle of complete freedom of speech will work. "Will it work?" they have been asking since the beginning of the debate. They have told us that it has never worked in any nation. They didn't give us a chance to show that it has been tried in any specific case. Let me point out to you and them as well that this principle of complete freedom of speech has been tried and has been found vastly superior to any principle of restriction under those cases. Let us take a few examples. The nation of Austria was having a political meeting; there were the socialists and there were the nationalists opposed to that party. They were going to meet in one city on one day, and Austria felt something must be done, so they spent $500,000 in protecting each group. They spent this money in building up complete freedom of speech. The result was there was no violence in that city. On the other hand, had they avoided the policy of complete freedom of speech there would have been violence resulting.

Let me give another case. At the time when George Creel was Police Commissioner of Denver, a prominent anarchist,

a regular "bluebeard" and vicious looking fellow said he was going to come to town and he sent advance notice, "I am going to speak in Denver. I am going to turn the town upside down." Everybody got excited and wanted to call out the national guard. They were going to parade along the street with cannon. George Creel had another idea. He invited this anarchist to come, to speak on the steps of the public hall. He said, "I will give you police protection," and that policy so took the wind out of the anarchist that he had not enough breath left to give a decent address and no violence occurred, because when you allow a man to speak you disarm him but when you suppress him you give his cause martyrdom and all his followers the glow of fanaticism. Suppression and not expression is the cause of disorder. Expression is necessary for the "life, liberty and pursuit of happiness," tra-la-la, in society everywhere. That throughout our speeches has been pointed out very clearly. Mr. McCorkle gave very concrete examples, Vintondale, Pennsylvania, Paterson, New Jersey, which show that suppression has caused violence and expression has caused removal of causes of bitterness, removal of causes of hatred and allowed men legal and sanctioned methods of discussion. Thus having discussed this issue of violence, we see that from time immemorial, we have had some sort of violence; it is only a question of which method will get rid of that best.

Before I close, let me mention the case which Mr. Andorn brought up about the Sacco-Vanzetti sympathizers. Violence occurred even though there was no speaker at all to address them. You can see clearly somebody was blamed for the violence that he, himself, points out would be clearly unjust, clearly wrong, for as a matter of fact the violence grew out of the social condition of unrest at that time. The speaker would no more be to blame for that violence than our friend up here should be thrown in jail for saying the knitted socks would not reach the soldiers.

The whole point of history, if we follow through any of the causes for instance of the Civil War, we find that suppression has always embittered both sides and that expression has been the means by which people could lawfully gain their ends. Expression and not suppression has meant order in society.

We are favoring complete freedom of speech which results

in stable and orderly society in which life and property will be safeguarded and not be endangered by illegal means, by suppression of freedom of speech.

Let us go on to the issue of injustice. The gentlemen have told you there might be some injustice. Of course, there might be. We will get rid of this injustice by educating the people and the magistrates. We will not be guided as they used to be in the old English court but rather we will educate them to relieve these unnecessary restrictions.

As a matter of fact, both sides in this argument are using education. Both of us are going around different places. They are telling you to restrict in some places and we are telling you to restrict in no cases. Which kind of education would get us farthest? Shall we suppress this man or not? Shall we let this man go free or not? You have the same inherent injustice if you suppress expression of speech. Speech being such an abstract quantity must be interpreted arbitrarily by each justice.

The gentlemen of the Negative introduced the principle that some restrictions are necessary. They are for educating the justices, but the justices must make up their minds on personal opinion and personal conscience or lack of conscience. That is the way we are going to get around it and the only way we can get around that is by the principle of complete freedom of speech, absolutely no suppression, no arbitrary restrictions or personal judgment.

Now left yet is the question of war. I think our cross examination brought up very clearly that certain classes particularly brought about the Civil War which my friend, Mr. Andorn, says he knows "nothing about." I think I learned back in school that there was one, too. In this case there was dissenting opinion in the North. There was opposition to the war. There was what is called minority criticism. This is very valuable in shaping the policy and getting rid of injustice in the war. The point is this war was carried on successfully and to a close. The same thing happened in the Great War. We have nothing to fear from the minority opinion. Why? In this Great War five hundred peace meetings were held by Mrs. Phillip Snowden in England alone. We have nothing to fear from minority opinion in the case of a war and the gentlemen

are just using that exceptional case of war time to justify this unjust and arbitrary policy of restriction.

Now, before I close, let me simply summarize these issues. We pointed out that in order to have a democracy, in order to have clear public opinion, in order to have a clear interpretation of this opinion, you can't afford merely to have freedom of speech, but you must have "complete" freedom of speech, because as soon as you suppress one individual you have no way of telling whether he is uttering the truth or uttering falsehoods. In order to have a real interchange of opinion you have to have "complete" freedom of speech and not just freedom of speech that they are trying to uphold; and in the second place we pointed out that violence results from social conditions which are intensified and embittered as soon as you strangle freedom of speech and shut the mouths of those who are criticized.

In the next place we pointed out that minority of opinion is necessary, that even in war where we do have criticism of the government these criticisms have certain value, and no evil attendant on them, for you may have criticism of war and still carry that war to a successful conclusion.

May I say, in summarizing this whole thing, that I should like to give you the statement of a prominent justice of the Supreme Court who has been cited so often, the statement of Justice Brandeis that "the founders of this country, believing that the best way to have peace in government was to have deliberative public opinion, prohibited silence coerced by law, the argument of force in the worst form."

CHAIRMAN COLBERT: You will remember I told you at the outset of this debate that the audience plays a very important part. Your role is not yet ended. I want you to look at the ballot which I hope you still have and turn to the part marked "After the Discussion." Now I wish you would indicate there your present belief on this question which you have heard so ably discussed. If you believe in the Affirmative of the proposition, if you believe the principle of complete freedom of speech is sound now after hearing all this discussion, indicate that belief on the ballot. On the other hand, if you now believe that the principle of complete freedom of speech is not sound, that is if you do not believe in the Affirmative of this proposition, then indicate that on the ballot, marking it "no." On

the other hand, if you are now undecided or still undecided, indicate that, too. Is that perfectly clear? You see we want to see what effect these debaters have had on your mind. We want to determine the change of opinion by your cooperation along this line, if possible. Now if you will all mark your ballots they will be collected by the manager.

I want to express my appreciation of your hearty cooperation and I hope this type of debating which is called "The Reserve Plan" of debating has been of as much interest to you as I am sure it has proven to the debaters.

As is customary after all our formal debates there will now be an opportunity afforded the audience for questions or cross examination, if you please. I want any of you to feel free to ask any questions at all. Something may come into your mind that has been stimulated by this discussion you have heard. Do I hear any? Hearing none, I assume then that the debaters have satisfied your questions.

QUESTION: If there hadn't been any talk during the war, would it have ended quicker?

CHAIRMAN COLBERT: The gentleman wants to know if there had been complete restriction during the war, if the war would have been ended quicker.

MR. MCCORKLE: I think the discussion was valuable in the Civil War, particularly in the selection of a general, and it is an acknowledged fact that the early commanders of the northern troops were politicians which the minority groups criticized. I think it helped bring the Civil War to a successful close.

CHAIRMAN COLBERT: Does that answer your question?

All right, are there any other questions which have been stimulated by these questions?

QUESTION: I don't see what the war had to do with it.

CHAIRMAN COLBERT: The young lady fails to see where the war came in on this question at all. That is a very pertinent question. We will ask the Negative.

MR. ANDORN: The only way the war was brought up was that in time of war it is necessary that we restrict speech in order that the nation may be united. Does that answer your question?

CHAIRMAN COLBERT: I am awaiting any further questions.

QUESTION: I should like to ask this. Perhaps these airplanes that cost so much and were not used in the war were not used because they were already obsolete.

CHAIRMAN COLBERT: Which side do you care to ask that question?

ANSWER: I have no preference.

CHAIRMAN COLBERT: Whoever brought it up can answer it.

MR. MCCORKLE: I think they could have cooperated with our army very well. Some were obsolete, but the large majority were constructed after the declaration of war. It was largely because of failure to transport them to France that they were not used.

CHAIRMAN COLBERT: Are there any further questions? Hearing none, I will now come to this conclusion which I made a moment ago, that these debaters must have satisfied your questions of this discussion, and I thank you.

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CHAPTER VI

INSANITY AS A DEFENSE IN CRIME

UNIVERSITY OF MONTANA

versus

COLLEGE OF THE PACIFIC

RESOLVED: *That the plea of temporary insanity as a defense in crime shall be abolished by law.*

This debate took place between an Affirmative team representing the University of Montana and a Negative team representing the College of the Pacific, at Stockton, California, on the evening of April 10, 1929. No decision was rendered, this being a debate of the no-decision type. This stenographic report of the debate was secured thru the kindly services of Professor Philip S. Broughton, Coach of Debate for the College of the Pacific.

BRIEF

INSANITY AS A DEFENSE IN CRIME

AFFIRMATIVE

I. Our present system of permitting the plea of temporary insanity as a defense in crime is harmful.

A. It permits many criminals to escape justice and so become future menaces to society.

1. A Mr. Lewis of Ohio, who was discharged on habeas corpus from the hospital for the insane, murdered a man and escaped conviction by pleading insanity.
   a. He is again in the hospital for the insane.
2. A Mr. Kiskinol of Michigan escaped conviction for murder on an insanity plea.
   a. After his lawyer secured his release from the hospital, he kidnapped a child and shot both her and two of her rescuers.
      (1) He again escaped conviction by pleading insanity.
3. Mr. Duffy of New York, a paranoiac, who committed murder and escaped conviction on a plea of insanity, was freed by his lawyer and is again at large.
4. Harry K. Thaw is free today, altho technically and morally a murderer.
5. Mr. Remus, who escaped conviction of the murder of his wife by pleading insanity, has since gained his liberty from the hospital for the insane and is again at large.

B. It breeds disrespect for law and order in this country.

1. This may be partly due to the flagrant violations of justice, such as the above, which are widely advertised by the newspapers.

2. It is more likely due to the defects which permit such violations to occur.

II. There are two steps in our system of criminal jurisprudence today by which men escape justice.

A. The right of habeas corpus.

1. Every criminal has a right to demand a writ of habeas corpus.

a. That writ will take him before a trial court which court determines his sanity.

B. The second hearing, which takes place after he has been proved insane, to discover whether or not he is sane enough to be released, is only a farce.

1. It is not as thoro as the first trial.

a. The court disregards, largely, any evidence of any predisposition the man may have had to insanity.

b. The county attorney does not think it as necessary for his office to fight the case as he did in the first trial.

(1) The prisoner is no longer conspicuously before the public and the crime is to a large extent forgotten.

(2) At the same time, the insane man is fighting just as hard or harder to obtain his freedom.

c. The jurors have forgotten the crime and look on the man, not as a criminal, but as a poor insane fellow who should have another chance.

2. Presumption in the law.

a. When a person is before a court on a charge of murder, a doubt as to his sanity is enough to acquit him of the murder and to send him to the hospital for the insane.

b. But the same doubt will not keep him there.

(1) He need then only show by a preponderance of evidence that he is sane.

3. Every person in an insane hospital has a right to demand a writ of habeas corpus.

a. Every insane person can be brought before a trial court and have his sanity tested as many times as he wishes.

III. Instead of being a simple and easily understood matter, knowledge of insanity has become highly technical.

A. Legal procedure in respect to it has not developed to the same extent as our knowledge of it.

1. Lawyers take advantage of this fact to use the insanity plea for their own ends.

B. Insanity has become too complex a matter to be handled before a court.

1. No court or jury has had the special education and training to be enabled to pass upon the highly technical matter of insanity.
   a. It must rely upon the information and testimony of experts.
2. Expert testimony is, of its very nature, confusing.
   a. Experts hired by the state may testify that the man is sane, while those hired by the defendant may testify that he is insane.
   b. The experts themselves often quibble over abstract theoretical possibilities.
3. Rules of evidence do not permit an expert to express a personal opinion, or a lawyer to direct a question as to the personal opinion of the expert on the defendant's sanity.
   a. The lawyer must put hypothetical questions only, which are often unintelligible.
4. Testimony as to insanity is often more difficult than any other matter.
   a. There is nothing tangible that can be held up before the court and jury.
   b. Insanity is abstract and theoretical.
5. A further confusing element arises when the judge instructs the jury.
   a. His only task is to lay out what purports to be the law on the subject.
   b. He ignores the evidence and testimony that has gone before.

IV. A change in our criminal procedure is necessary.
  A. Either the plea of insanity must be abolished as a legal plea, or our present system of court procedure must be altered.
    1. The latter plan might do away with very beneficial rules which work adequately in most cases except those of insanity.
    2. A system of examination for sanity after conviction for crime would do away with many of the present difficulties.
      a. The man should be tried first as to his guilt.
      b. Then, after conviction, he should be tried by a board of psychiatrists as to his sanity.
        (1) If insane, the man goes to the hospital with the verdict "guilty" tagged upon him.
          (a) This would prevent the Thaws and Remuses from escaping the consequences of their crimes.
      c. The plea would thus be taken out of the hands of the court entirely.

NEGATIVE

I. The plea of insanity is not to blame for our present errors in the administration of justice.
  A. They are due, instead, to our present defective system of procedure.
    1. Expert witnesses, often not expert at all.
    2. Hypothetical questions which tend to mislead and confuse.
    3. Testimony, the important points of which may have been carefully avoided.
    4. Our present jury system, not always representative of American citizenship and lax in its methods.
    5. The judge, who may be the good fellow rather than of real accomplishments and sterling qualities.

II. In an improved system of criminal jurisprudence, the insanity plea will occupy an even more important position than it does today.
  A. In spite of the frequent abuse and improper administration of the insanity plea, it is likely that more

insane, defective and irresponsible persons are unjustly convicted of crime than there are guilty persons who escape by pretending insanity.

B. Insanity needs to be re-defined legally.
   1. The legal definition has already been changed a great many times since it was introduced.
   2. A re-definition would bring the legal attitude on the subject up to date.
      a. The courts have never kept pace with science or morals and probably never will.
      b. Criminal law is made with reference to the average man, and not the abnormal.

C. Our entire court system needs to be revised.
   1. The judges should be trained not only in legal matters but also in knowledge of medicine and psychology.
   2. The field of expert witnesses should be closed to all except eminent psychologists, psychiatrists and reputable physicians.
   3. The interpretation of expert testimony must be left to lawyers, who are really competent to do it.
   4. Intelligent court decisions must be provided for.
      a. This can only be done by removing lay men from the jurors' box.
      b. Such questions should only be decided by trained judges.

D. Our insanity plea should be not only retained but expanded.
   1. Our interest in the individual as a member of society prevents us from turning the final disposition of his case over to a board of alienists, unchecked by the protection the plea gives to the individual.
   2. The retaining of the plea would benefit both the individual and society.
      a. By asking the offender to make a plea as to his mental condition, society is given the opportunity to study obviously deficient criminals.
      b. It protects the individual that the court cannot now protect.

INSANITY AS A DEFENSE IN CRIME

UNIVERSITY OF MONTANA

versus

COLLEGE OF THE PACIFIC

FIRST AFFIRMATIVE

Russell Smith, Montana

My Friends: I wish to say for Mr. Williams and myself that we are glad to be here in Stockton tonight and glad to meet with the gentlemen from Pacific on this question of the insanity plea. When we left Montana the sun was shining much as it has been here today, but the further South we came the colder it got and all through Oregon and California we have been shivering. I hope that we don't have to discount everything from California as much as we have had to discount the reports of their weather. We have come from Montana to discuss a question of law, a question which may become rather involved but I hope we can arrive at the true issues without becoming too technical. I know of no better way of introducing the discussion of the insanity plea than by reviewing a few of the cases in which this insanity plea has been used. In Ohio a few years ago the State Board of Psychiatry declared a man named Lewis to be criminally insane so they sent him to an insane asylum along with the rest of the insane people. While Mr. Lewis was in the asylum he exhibited every trace of insanity, he did everything, I suppose, that insane persons are proverbially supposed to do. Some time after that a lawyer came before that Board of authorities in Ohio with a writ of habeas corpus and got Mr. Lewis before a trial court to have his sanity tested. The trial court, opposed to the evidence as given by the hospital authorities found Mr. Lewis to be sane, so they allowed him to escape out of the insane asylum. Mr. Lewis had been out of the asylum only a few weeks when he murdered a man. He was again indicted for first degree murder and again he used the plea of

insanity and his plea was successful and again he is in the insane hospital. That, My Friends, is just an instance wherein the insanity plea has allowed the law to relax and has allowed an insane criminal to be let off, and to be free to commit murder again. A case of much the same kind occurred in Michigan a few years later. There was a young foreign fellow named Kiskinol. Kiskinol was insane. He murdered a man and the courts found him insane and sent him to the insane asylum in that state. He, too, exhibited all the traces of insanity while at the hospital but his lawyer secured a writ of habeas corpus and took him before a trial court and proved him sane and the court allowed him to go free. Well, Kiskinol had been out of the hospital a month or so when he kidnapped a little girl and while he was being pursued he shot the girl and murdered two of his pursuers. He was again indicted for murder and again pled insanity and I imagine that today he is in the insane asylum unless he has been released by another writ of habeas corpus and trial of the court.

There was a soldier in New York some years ago named Duffy. Mr. Duffy was a paranoiac. Now the paranoiac type of insane person believes that persons are persecuting him. Mr. Duffy had these insane delusions that his friends were persecuting him and telling stories about him and one day these delusions became so strong that Mr. Duffy shot two of his tent companions. He was taken up before a court and the court found him insane and sent him to the insane hospital. While at the hospital Mr. Duffy had these same delusions and these same old ideas that everyone was persecuting him and several times threatened to kill inmates and attendants. Finally, however, a lawyer came before the hospital with the usual writ of habeas corpus and took Duffy before a trial court. The court found Mr. Duffy sane and allowed him to go free and I dare say that Mr. Duffy, if he is living today, is still suffering from these same insane delusions that persons are persecuting him and telling falsehoods about him.

I imagine every one in the audience knows of the famous Thaw case. Harry K. Thaw, a New Yorker, had murdered a man in a quarrel over a girl. He was rich, and dodged in and out of the courts for some ten or twelve years and finally his insanity plea was successful in saving his neck for him and he is living today in your beautiful climate in California,

technically and morally a murderer; yet he escaped through this defect in our procedure, the insanity plea.

Then we come to the prize of them all, the Remus case. Remus was a lawyer who succeeded in getting himself disbarred by his corrupt practices and went into the more lucrative profession of bootlegging. Strange as it may seem, Remus was sent to prison for his activities in this more or less modern profession. While in the prison his wife started divorce proceedings against him and when he got out of prison he took the more direct method of settling their difficulties and shot his wife. Well, he was smart in the ways of the law and the first thing he did was to plead not guilty and then, as everyone expected, he entered a plea of not guilty by reason of insanity. A board of experts declared Remus sane a few days before the trial. This suited his plans perfectly and they let him plead his own defense and Mr. Remus, who was a clever lawyer, in the face of overwhelming evidence, succeeded in convincing the twelve persons on the jury that he was insane, and not only insane, but insane with a new type of insanity, something that the courts had previously never before recognized. Can you imagine that! A lawyer, declared sane by a board of experts a few days before his trial, conducting his own defense and having a jury of twelve men find him to be insane. Mr. Remus was sent to the insane hospital and he too escaped on a writ of habeas corpus and I dare say Mr. Remus is somewhere today practicing his old profession of bootlegging, unless, of course, he has been frightened by the recent Jones law.

We hear today from a great many sources that there is a disrespect for law and order in our country. We hear that the American people do not regard their law courts and their laws as highly as they should. I wonder if this disrespect for law, if any really exists, is not due in a large measure to the few flagrant violations which occur under our judicial system and which are given such wide advertising in the newspapers. I daresay if I asked the persons in the audience here tonight to mention some of the major crimes that have happened in the past years they would mention both the Remus and Thaw trials. I dare say that the gentleman from Pacific will say that our disrespect for law is not so much due to our defects of procedure but to the wide publicity that is given by the

newspapers, yet if we go more fundamentally into the matter it seems to me that the real disrespect for law today is being caused by these defects in our procedure which are allowing a few of the notorious criminals to escape justice, a few such as Remus and Thaw and the like of that. Looking at our system of criminal jurisprudence today there are primarily two steps by which all of these men escape justice. First of all, every criminal has a constitutional right to demand a writ of habeas corpus. That writ will take him before a trial court which court determines his sanity. In the second place, the second hearing, that is, the hearing which takes place after the man has been found insane, acquitted of the crime and sent to the insane asylum, the second trial, which determines whether or not he is sane enough to go back to the public after having been incarcerated in the insane asylum, is today nothing more than a farce. The second trial is even less thorough than the first trial which is bad enough. We find that the lawyers and the court do not go back into the man's personal methods and personal history as thoroughly as they did at the first trial. We find that the court seems to think—this man has been in an insane asylum, he was insane at one time, true, but he has been in an insane asylum and possibly he has been cured, so we will not regard the past evidence as to his insanity and just look at the man as he is here today; and so they disregard, to a large extent, any evidence of any predisposition the man may have to insanity. Then again we find that the county attorney does not fight in the second trial as he had fought in the first; he has, so to speak, won or lost the case at the first trial. The prisoner is no longer conspicuously before the public and the elements of the crime are to a large extent forgotten. So the county attorney does not think it necessary for his office to fight the case to keep the insane person in the asylum. However, the insane man is fighting just as hard or harder to gain his freedom. And there is another element to the second trial, and that is, as I said before, the elements and circumstances surrounding the crime are forgotten, the public has, to a large extent, forgotten that the man before them was guilty of a crime and the jurors look at him not as a man who has committed a heinous crime against society but just as a poor insane fellow who may have been cured and should have another chance.

Then we come to the matter of presumptions in the law. We find that today whenever a person is before a court on a charge of murder, usually all he must do to acquit himself is to create a doubt in the minds of the jurors as to his sanity. In other words, My Friends, a doubt in the minds of the jurors on the matter of his sanity will acquit him of the criminal charge and send him to the insane asylum. However, when he comes before this second court to have his sanity retested, the presumption changes and then the man must show by a mere preponderance of the evidence that he is sane. In other words a doubt as to a man's sanity will send him to the insane asylum but the same amount of doubt as to his sanity will not keep him there. There is a difference between doubt as to a man's sanity and a preponderance of the evidence and that difference is in favor of the defendant every time. If we look at the result we find it has led to gross injustices in our law. In 1923 there were thirty-four persons released from Matteawan Insane Hospital in New York on writs of habeas corpus and, out of the thirty-four whom the trial court declared to be sane, only one was even partially sane.

And so I go on to a discussion of the second step, and that is the writ of habeas corpus. Every person in an insane hospital has a right to demand a writ of habeas corpus, which writ takes him before a more or less lax second court. A case arose in your own state some years ago that illustrates my point. The name of the case was Grender vs. Jones. There was an insane man in an insane hospital and a lawyer came before the Superintendent with a writ of habeas corpus, saying, "Why do you hold this man?" and the Superintendent said "This man is crazy, it would not be fair to allow him to go back to the public, he is dangerous, a second trial is unnecessary, I know he is crazy." But the lawyer, knowing that the second court would possibly release the man, went to the Supreme Court and the Supreme Court said that, no matter how insane a man might be in the opinion of the superintendent of the hospital, that man could not be denied his constitutional right to have his sanity retested by means of the writ of habeas corpus and a second trial. Now when we take the fact that every person in an insane asylum can be brought before a trial court and have his sanity retested, not only once, but as many times as he wishes, and couple that with the fact that

the trial courts are essentially lax in allowing these persons to escape, we have the reason why, out of thirty-four persons declared sane by New York courts, only one was even partially sane. The question then is what will be or can be done to remedy this. What we advocate is an examination after conviction and the abolishing of the plea of not guilty by reason of insanity; to try the man and declare the man guilty or not guilty, regardless of the question of insanity. Then, after the men are declared guilty, examine them before a board of psychiatrists to determine whether or not they are sane. If they are sane, send them to prison; if they are insane, send them to the insane asylum. There is one little difference in this, which is very important—and I hope that you will note it—and that is, when the insane person goes to the insane asylum he goes, not as an insane person, but as a guilty criminal. In other words, he goes there with the verdict guilty tagged upon him and that, My Friends, will prevent the Remuses and Thaws and Duffys from escaping from the insane asylums. We simply advocate examination after conviction. We believe it will place the Remuses and Duffys where the writ of habeas corpus will not reach them, and when the lawyers come before the Superintendent, saying, "Why do you hold this man? I should like to secure his release on a writ of Habeas Corpus," the Superintendent will simply reply, "The man has been found guilty of a crime and for that reason I hold him." In other words, My Friends, the abolishing of the plea of not guilty by reason of insanity will prevent the miscarriages of justice which are allowing our Remuses and Thaws to escape justice, and it will place the insane man and the criminal in insane asylums and in penitentiaries where the writ of habeas corpus will not reach them.

FIRST NEGATIVE

James Robertson, Pacific

Gentlemen of the Opposition, Ladies and Gentlemen: I am certainly glad that the public speaking and sociology classes have taken such an intense interest in this debate today and I am sure you will be very glad also. I, too, wish to welcome the gentlemen from Montana. It is indeed a pleasure to have such an able group of lawyers with us this evening,

and I trust we of Pacific will again have the pleasure of having these gentlemen or their successors come to the Pacific campus.

Mark Twain once said, "Nowadays, a man don't commit murder unless he is hopelessly insane because then he could be freed from all responsibility for the crime." I wonder whether or not this does not just exactly represent the attitude toward crime that a great many of these criminals have taken who have been permitted to go absolutely free because they pled not guilty by reason of insanity.

We of the Negative have wondered whether it is the plea of insanity that is at fault or possibly is it the result of a defective system of court procedure. Consequently, after an investigation of the question we of the Negative have decided that before we can logically answer the issues in this debate we must first of all answer two paramount questions.

First of all, are the evils considered to be due to the plea of temporary insanity, as offered today in the courts, the defects in the plea itself or are they rather the defects of a poor system of court procedure: and, in the second place, in a scientific system of jurisprudence, must we not accord the plea of insanity an important and vital place?

Now, we of the Negative have absolutely no desire to quibble over the debate this evening and we want to come to the real issue of the question. In the first place, the courts today do not recognize a plea of temporary insanity, and the person either pleads not guilty, guilty, or not guilty by reason of insanity. That is the plea we are considering this evening and it is upon this basis that we are going to consider whether or not we ought to retain this plea, modify this plea or abolish it absolutely. And, in the second place, we are not considering this question from a purely abstract viewpoint. We want to get at the real vital facts in the question and we want to determine whether or not the plea of insanity as it is in the courts today should be retained or should be abolished.

Now in order that we may get a more comprehensive view of the situation for the time being, let us imagine that we are in the average American courtroom. The crowd is assembled. Everybody is intent on getting a glimpse of the notorious defendant. We see, over in the jury box, twelve good men and true, a jury of his peers, that is, of average American

citizens. More than likely, however, they are not quite so representative, and, for the time being, they are enjoying the notoriety and glory of sitting complacently in the jury box waiting for the conflict to begin.

Both sides marshall all their legal talent, not a man of whom, probably, is versed in the intricate knowledge of mental processes, but men that can be banked on to win out by a show of sentiment and sob stories if necessary. There sits the jury of twelve good men and true. Both sides have gotten together their expert witnesses. Just exactly what are expert witnesses? What are they and what do they stand for? Well, in the first place, whenever a man pleads not guilty by reason of insanity, immediately the defense and the prosecution get together and form a complicated system of questions, and collect all of their expert witnesses, and these expert witnesses, men without any technical knowledge of insanity cases, determine, or, at any rate, give evidence as to the man's sanity. Why, in a trial held in Oakland recently, the two expert witnesses were a chiropodist and a horse doctor respectively! That is a delightful combination, of course, but hardly logical to aid in determining the sanity of an individual, and yet, Ladies and Gentlemen, the members of the team from Montana will still persist in telling us that it is the plea of insanity that is at fault and not the absurd system of expert witnesses.

Going on a little bit further, we want to know just exactly what the lawyers have to do with the case. These lawyers get together, as soon as the plea of insanity is introduced, and, from their absurd misconception of the character of mental processes, form their hypothetical questions. I think you would be interested in hearing one of these hypothetical questions. It is really quite amusing and illustrates aptly just exactly the position in which our American courts have placed the plea of insanity. I have a question here, it is rather abridged but I am sure you would not want to sit here until ten or eleven o'clock, so I will read you this question as it is introduced by each side and as it is given to the expert witness who is supposed to answer it. Now listen to me and determine for yourselves whether it is the plea of insanity that is at fault or the system of hypothetical questions to expert witnesses:

"Doctor, kindly assume that the defendant had been a pupil taught by Lida Beecher in the public school at Poland and

harbored against her a desire for revenge because she punished him; that several days previously he had this wrench, Exhibit 45, in his possession and stated to a man who asked him what he was going to do with it, that he had use for it; that he met Miss Beecher, who was a young lady about twenty years old, five feet three inches in height, weighing about 126 pounds, wearing upon her head this cap, Exhibit 26, and, as an outer garment, this raincoat, Exhibit 29, Wednesday, March 25th, 1914, about seven P.M. in the post office at Poland, the location of which is indicated on this map Exhibit 1, to which I now call your attention; that on the following day, Friday, he provided himself with the knife, Exhibit 48, for the occasion, and with the intent of killing her, sharpened it for that purpose; that, as she stopped, he stepped back of her, hit her on the head with this monkey wrench, Exhibit 45, which weighs 2 pounds 7 15/16 ounces, which I now show to you, he at that time having as an outer garment this coat, and wearing this shirt, Exhibit 49, which I now show to you; took the knife, Exhibit 48, and as she was lying on the ground, hit her with it several times to be sure to finish her, inflicting punctured wounds, one on the back of her neck just below the hair line, ¾ of an inch in length, cutting a hole in the external carotid artery 3 inches above the bifurcation of the common carotid artery," and so on ad nauseam, for six pages of printed material. That was six pages of printed material and it only had one sentence in the whole thing, and yet these poor misguided experts—for the day, as we might call them—are supposed upon the basis of these garbled details to determine whether or not the defendant who committed the crime was insane or not, with absolutely no regard for prior conditions, and, let us say, hereditary traces of insanity, mental conditions and the like. These gruesome details are again and again restated to the supposed expert witness and he is from them to determine whether or not the man is insane. And yet the gentlemen from Montana will still tell us that it is the plea of insanity that is at fault, and not this system of hypothetical questions.

Now the evidence has been most carefully sifted and the question is before the jury. By saying that the evidence has been most carefully sifted I mean that all the important points have been most carefully avoided. And now the question comes before the jury of his peers.

Are these juries really representative groups of citizens? They may be, but, as a general rule, we find they are men who represent people who have not been successful in the economic world, people who have entered the ranks of professional jurors, people in every way incapable of rendering an impartial verdict to their fellow men. These are the people called upon to determine the sanity of an individual. These men and women leave the jury room and go into a huddle; they are to determine whether or not the man is sane. If it happens to be right about meal time they delay the case a little bit so that the county can provide them with a free meal. There are records of a case in San Joaquin County where the jury had been impaneled to see which side had the best lawyer, and during the course of the afternoon the weather got exceedingly hot and the jury cast about for some means of diversion; and consequently the entire jury of twelve good men and true were placed in a Graham Brothers truck and driven out to Pacific Stadium in which a football game was in progress, and, there, amid the yelling and turmoil, they determined whether or not the defendant was guilty. That is the situation that is in our average American courtroom. Yet the gentlemen from Montana will still tell us that it is the plea of temporary insanity that is at fault and not this absurd system of juries which we have.

No courtroom would be complete without a judge. We see him there, his benign countenance peering behind the judicial desk as he desperately tries to keep pace with the proceedings. Is he a man of real accomplishments and sterling qualities? He may be, but as a general rule he is a member of the loyal order of handshaking, backslapping yaps. While this is not meant as any reflection on the legal profession, at any rate it is true, and we are not here to mince words, we are here to determine just exactly the situation as it occurs in the courts today.

Is the judge, as a general rule, in favor of the admission of expert testimony by really expert witnesses, such as psychiatrists, alienists, men in every way capable of determining the sanity of an individual? He is not. And what is more, he waxes indignant whenever some misguided alienist ventures to protest feebly and suggest that possibly the hypothetical question is worded somewhat ambiguously, and demands, as a matter of

routine procedure, that he answer the hypothetical question propounded by some dreadfully clever but frightfully ignorant member of the bar, ignorant, I mean, of any knowledge of the mental processes and reactions. That, Ladies and Gentlemen, is exactly the situation in our American courts today.

Frankly, it is not the plea of insanity that is at fault. That plea is not a bit overworked, despite the statements of the gentleman from Montana. He, it is true, cited a couple of cases, but let me call your attention to the fact that tests conducted in the Indiana State Penitentiary brought out these facts—that in an examination of over 2,500 persons, 1,575 or, let us say, two-thirds, of these men were mentally defective. Does this in any way tend to support their statements that men are going free by virtue of the fact that they plead not guilty by reason of insanity?

Consequently, we say that the question really has decided itself and that it is not the plea of temporary insanity that is at fault but actually it is the result of this inefficiency, almost criminal inefficiency in our court system. Consequently, we of the Negative would say that the real fault in the case lies not with the plea as it is introduced in the courts today, but rather with the gross maladministration and inefficiency of this inadequate court system.

SECOND AFFIRMATIVE

Robert Williams, Montana

Mr. Chairman, Ladies and Gentlemen: I should like, figuratively speaking, to shake Mr. Robertson's hand. That is the very best delivery of my speech that I have ever heard. We heartily agree with Mr. Robertson on most of the points he has put forth. It reminds me of the time when I was down in a little town we call Warm Springs in Montana, that is where we keep these people that are a little bit off; I was down there visiting on my first time, and the Superintendent, being a good friend of mine, was showing me around the place. There was a little party going on in one of the administration buildings and I was asked to go in, and I went in and they were dancing; I danced with a lot of the people there and thought it was quite a lively crowd. Finally I asked him, "Where are all the

insane people around this place?" and my friend said, "Well, these people are all insane;" it rather struck me as remarkable because I felt quite at home with them, but then, I feel quite at home here too! All of which goes to prove that that is the insidious thing about insanity. It seems to me that this question in the debate has developed into a matter of an interpretation of the question. As the gentleman just before me shows by his argument, it is quite evident that what they understand to be a plea is quite different from what we believe to be a plea and what we believe to be the correct understanding of a plea. The question we are considering is a legal question, and, under the definition of a plea as it is understood by those who handle such pleas, a plea is that which is given in court, made in defense, or it may be made by the plaintiff, between the time of the filing of the case and the rendering of a verdict. Therefore, any system which would permit the question of a man's sanity to be brought up before the court would be retaining the plea. Any system which takes the matter of insanity out of the hands of the court would be abolishing the plea. This definition of a plea is that which is given in all the law encyclopedias, and is one which we got from a noted work on words and phrases of the law, and this is the first time it has been questioned. It is to be regretted that we are so much alike in our arguments, and that it has really come to a matter of technicality, but at any rate we will have to go forward.

It has been said that the greatest enemies of the law are not the criminals but the lawyers. The lawyers make the laws and, before the ink on the enacting signature is dry, they set about to find some means of circumventing them. There is no better illustration of this than the misuse that our plea of insanity has been put to in the past decade or so. In passing, I should like to say that there is no such thing as a plea of temporary insanity. We have battled other teams on the question of temporary insanity, but to go into that here is to bring up another matter. The lawyers and the lawyer judges put the plea of insanity into the law for the purpose of protecting the genuinely insane, and, as long as insanity was thought to be a simple affair, the plea worked satisfactorily, but since 1843 at the time of the MacNaghten trial, which established the plea of insanity in the law, the scientists have taken hold,

and, from what was thought to be a rather simple and easily understood affair, insanity has become highly technical. Today, particularly in the light of a few of the more notorious murder trials, we are rather inclined to believe that whether or not the defendant is insane is not so dependent upon the state of his mind perhaps as upon the state of his pocketbook. We don't blame the lawyers for using the plea of insanity. They have a right to use it as long as it is in the law; neither is it to be regretted that we know so much more about mental defects than we did in 1843. But it is to be regretted that the legal procedure and methods of handling insanity cases have not developed to the same extent as our knowledge of insanity has developed. As it is today, as Mr. Robertson so effectively pointed out, our courts are entirely incompetent in handling this matter of insanity. It is rather ludicrous to see two teams cooperating as we are tonight, but it seems to be in the nature of things. I wonder if you really appreciate the great strides that have been made in our understanding of insanity in the past few years. A number of years ago, it was thought than an insane person was a kind of beast, possessed of a devil. A little while later it was thought to be an illness and developments were made where more human treatment was accorded to the insane. At the time of the MacNaghten trial in 1843, insanity as a plea in defense of crime became apparently fixed in the law, but this was, in 1843, an extremely simple affair and the known forms of insanity were but few. But now look at it. Apparently the psychiatrists were not thinking of our legal procedure in arriving at a definition of insanity, for here are a few of the more elementary forms of insanity as we know them today. There is what we call general paresthesis, feeble-mindedness, epilepsies, alcoholic sychoses, embracing dipsomania, delirium tremens, alcoholic hallucinosis, encephalopsychoses, transitory psychoses accompanying bodily disorders, psychoses due to old age, dementia praecox, neuroses or abnormal irritability, and psychopathic personalities, and these are but a few of the more elementary forms. The gist of the whole matter of this insanity plea is that we are simply attempting to apply an 1843 process of legal procedure to a 1929 definition of insanity, and the two just won't cooperate. This matter of insanity may be simple enough in the text books and in the minds of the experts, and

our teachers in psychology think that something should be left to us, but, when it comes before the court, the matter is entirely too complex and difficult to be properly handled. When insanity is pled as a defense of crime, going into a general analysis, there are really two questions to be determined, a test within a test, and the same jury is called upon to decide not alone whether the man is guilty of committing the actual crime but also whether the man was sane. It is true that an ordinary court can pass upon the ordinary facts without using anything more than common intelligence, but, when insanity is pled, an entirely different situation arises. In the first place, what court or jury has had the special education and training to enable them intelligently to pass upon the highly technical matter of insanity? Their common sense and common understanding cannot serve them. They must rely upon the information and testimony of experts. But, as Mr. Robertson quite distinctly pointed out, the expert testimony is, of its very nature, confusing. The experts, hired and paid by the state to earn their fees, testify that the prisoner is sane while those hired by the defendant, for the same reason, testify that the man is insane. The experts themselves quibble over abstract theoretical possibilities. The jury and the court would have a hard enough time in determining whether the prisoner was insane if all of the information and testimony was to the same effect, but what chance has a court or jury to understand the testimony, or to place any confidence in it, when they are so patently shown that even those supposed to know the most about it cannot agree? Again, another confusing element, as Mr. Robertson also pointed out, is the fact that the rules of evidence do not permit a lawyer or an expert to express a personal opinion, or direct a question as to the personal opinion on the sanity or insanity of the defendant, and must put hypothetical questions, which in some instances—Mr. Robertson's example was a very good one and I know of another that was some 22,000 words in length—are absolutely unintelligible. Another element that arises, when insanity is pled, is the fact that testimony on insanity is of its very nature more difficult than any other sort of case. In an insanity case, there is nothing tangible that can be held up before the court and jury for their eyes to see and their fingers to touch. The matter of insanity is purely an abstract and theoretical one and

depends upon mental appreciation and grasp, a state of mind, and the court cannot see that nor the jury feel it. A college group is perhaps better qualified and better able to understand this abstract testimony than the average court but I dare say there are not half a dozen here tonight who feel themselves competent to pass upon another man's sanity if the case was not clear. I don't believe I should like to. I myself don't believe any of us would like to have our sanity decided by a judge or jury—that is, unless we were guilty—and then we might do like Remus and invent a new kind of insanity.

And the fifth confusing element arises when the judge gives the instructions. Now the judge is perhaps the one person in the courtroom who is best able to understand the legal procedure, but the plea of insanity, as Mr. Robertson suggested, demands that the judge wash his hands of the entire affair. The judge has rather an easy task. He simply reaches into a pigeon hole and withdraws therefrom an instruction to the jury on the plea of insanity that has changed but little in the last one hundred years and proceeds to read it. It is true that a man may be insane and yet may be strictly and legally responsible, but the charge says nothing about this, in fact, the charge says nothing at all about all the evidence and all the testimony that has gone before. The charge purports to lay out the law on the subject, but what the law is no man can say. It is still a matter that is in conflict between judges and jurisdictions and to all practical purposes the only purpose of the charge is further to confuse and perhaps pave the way for a plea like Remus'. You remember that Remus was sane enough to conduct his own trial in a very effective manner but the jury found him to be too insane to be legally responsible. After all of this monkey business has been finished, the jury are simply up a stump and none of them are sure as to exactly what is the condition. In that frame of mind they retire to the jury room and eventually return with a verdict, or perhaps go out to see a football game—juries have been known to do worse things. If the plea has been successful, remembering always the proper interpretation of the word "plea," the man is acquitted, even though he may be in fact sane. If the plea has been unsuccessful, the decision of the court is carried out and he is sent to the penitentiary or the gallows, even though in fact he may be insane. In either cir-

cumstance, there is entirely too great an opportunity for a miscarriage of justice—too great a chance that a sane man will use the plea and escape, or that an insane man will use the plea and be hanged, to tolerate further the plea of insanity. The time for a change of our criminal procedure has arrived. We have reached the point where we have either to abolish the plea of insanity as a legal plea or do away with the right of the defendant to hire experts or to bring other witnesses into court to establish his innocence, or his insanity; and we might even have to do away with the right of the defendant to hire attorneys, for, after all, it is the attorneys who engineer the plea through the courts and instruct the witnesses what they shall say and how they shall act. We might have to do away with certain very beneficial rules of evidence which work adequately in most cases but are purely out of place in an examination on the matter of insanity. We may even have to go so far, as Mr. Robertson kindly suggested, as to abolish the right of trial by jury. In fact, it is difficult to imagine any court procedure which would adequately handle the plea of insanity.

It has been suggested that we adopt a system of examination after conviction by a board of impartial experts and that that would go a long way in removing many of the difficulties and objections in the present system; remembering always that, in this method, the plea would be effectively abolished, that is, the matter would be taken out of the hands of the court entirely. When we also remember that a plea, as properly understood, in the legal sense, as being something between the filing of the information and the finding of a verdict, this method of ours, which is supported by a respectable body of opinion in the United States, among others being Al Smith, would seem to recommend itself. I thank you.

SECOND NEGATIVE

Wesley Sawyer, Pacific

Before diving directly into the vast problem with which the insanity plea confronts us, let us examine for just a moment the system of penal reform which we have in the United States today, to see, if we may, just what part punishment plays in

that system. After all, are we interested in punishing individuals?

I would say "no," as a society, we are not at all interested in punishing individuals, but we do have two main reasons why these maladjustments must be corrected. The first is for the protection of society itself and the second is for the protection of the individual as a member of this same society.

The Negative this evening are not for a moment going to contend that there has not been a great deal of abuse and improper administration of the insanity plea, but we do believe that, in spite of the disrepute of the insanity plea and of insanity experts, it is likely that there are a great many more insane, defective and irresponsible persons who are unjustly convicted of crime than there are guilty persons who succeed in escaping by pretending insanity. Even in view of this fact, however, we believe that any sound system of criminal jurisprudence will give the plea of insanity a vital place.

As my colleague has already shown you, as well as the gentlemen of the Affirmative, our present system is full of very grave defects, and one of the greatest of these is the legal definition of insanity. We feel that there is a very great need of a re-definition of insanity at the present time.

The fact that the legal definition has changed a great many times since it was first introduced as a plea seems to indicate that it is not possible for it to remain the same in the future. A re-definition would not in any way change or do away with insanity as a defense but it would merely bring the legal attitude on the subject up to include a reasonable amount of absolute scientific knowledge which we have today. The courts have never kept pace with science or morals and probably never will, but it is certainly time this was recognized and understood, and some efforts made in that direction.

Criminal law, both common and statutory today, is made with reference to the average or ordinary man. The law, in taking this stand, accepts the general popular belief in human freedom and human will, the right to choose, to decide freely between the different courses open to us. Man is regarded as a proposing, deliberate, free being. He is expected to use this will power to act in a manner acceptable to society. If he falls short, however, he can lay claim that, due to some mental defect or disease, he was unable to exercise this power and he

will be excused. The law, in a word, recognizes certain degrees or qualities of mental disturbances and diseases which prevent the individual from acting in accordance with rational principles. Therefore, the law maintains a few brief legal tests by which a man's sanity is tested.

Naturally these tests, obsolete as they are, would reveal only a very small portion of those suffering from mental disorders. The innumerable sufferers having other of the countless mental disorders not covered by them would be treated from a purely penalistic standpoint and would not receive treatment that those suffering from such disorders should receive.

After all, the very fact that debaters from the University of Montana should present a question in which is used the phrase "temporary insanity," represents how incompetent the law courts are and how utterly inadequate is the present legal attitude toward crime. Medically, there is no such thing or term as insanity, to say nothing of temporary insanity, but, legally, the word includes most of the serious psychoses. But, as we have pointed out before, the tests provided by law are for the most part erroneous, besides being unscientific, and apart from any sound system for settling questions relating to mental disorders.

In a society such as ours today with our two-fold responsibility and purpose, first for our own existence and second for the individual member of society, just what is the best way in which we can adequately protect ourselves against crime and by which we may eventually hope to stamp it out altogether? A most prominent fact disclosed in a study of criminals at penitentiaries is that they are frequently disordered beings.

The fault may be either organic or due to environment, which we, as society, have provided for them. The best and only logical way to get at these disorders is to study the individuals suffering from them to find out, if we may, what things have caused them to become criminals. This is only studied in properly conducted institutions, not in the average state penitentiary or county jail.

How then are we going to relieve the existing situation? Certainly not by letting ignorant laymen continue to sit as jurors and be presided over by judges who happen to be the best back-slappers, and secured their positions through purely

political mediums, and who still believe Blackstone to be the valid source of the original of our common law, and yet we present technical problems to them and wonder why we do not get scientific results.

One of the two steps that have been advocated is a complete revision in our court system, placing it on a sound and scientific basis in the handling of the questions presented, and we maintain the insanity plea would occupy even a greater place in a sound, scientific system than it does today.

Starting from the top on a system of this type, we need judges—not politicians—men trained not only in legal matters but men having a definite foundation knowledge of medicine and psychology, who, by reason of this knowledge, retain their positions with security. The political judge, the back-sliding, back-slapping, handshaking variety has been proved to be of value no longer, and no longer deserves a place in our system.

Another department that deserves revision is that concerned with the use of expert witnesses. Expert witnesses in the past have been men of little or no standing whatsoever, and, as we have said, have testified for the most part in favor of the party paying the bill, although their testimony might be in direct opposition to highly eminent experts in their line. It is time that this field should be closed to all but really eminent psychologists, psychiatrists and medical men of absolute repute whose testimony in court could be regarded as final.

And after we have succeeded in establishing a respectable standard for the expert witness just who are we going to let interpret his testimony? This interpretation cannot be left to be given by ignorant lawyers—and, by ignorant, I mean with no scientific knowledge—but must be interpreted by competent men, in order to interpret without adding to or detracting from.

With the sound system thus far outlined, we must also provide for intelligent court decisions and such decisions can only be obtained by removing the laymen from the jurors' box. Questions concerning mental conditions should only be decided by boards of trained judges. I don't believe, Ladies and Gentlemen, that there is anything in our present system of court procedure so utterly inadequate and utterly nonsensical as the time honored system of letting a jury decide questions relating to mental conditions.

Now, Ladies and Gentlemen, coupling these suggested improvements in courtroom procedure with a scientific study of criminals and the causes of crime, we of the Negative believe that ultimately the desired result will be attained, but that society has not yet reached the place where the plea of insanity can be abolished, as it is still regarded as a vital part of our criminal procedure; for, after all, as Mr. Robertson pointed out, it is not the plea of insanity that has met with disfavor, it is the fact that in the past, after a man succeeded in establishing that plea, he has been set scot free instead of being confined in a proper institution such as our plan would automatically provide for.

The ultimate abolition of crime depends upon whether or not we can successfully get at the root and sources of these maladjustments. Obviously, this can only be obtained through intensive study after an individual has been confined in an institution, and with these facts in view I will take up my last point, showing how in a sound scientific system of criminal jurisprudence the plea of insanity should not only be retained but expanded.

As I have already pointed out, we have not yet reached the point where we are willing to admit that all this can be now done from objective study. We are not quite ready to turn these persons over to the Behaviorists for final disposition. The fact that we are interested in the individual as a member of society prevents us from turning the ultimate disposition and commitment of his case over to alienists unchecked by the protection the plea gives to the individual.

The retaining of the plea, however, would not only be beneficial from the standpoint of the individual but to society. Society quite occasionally wishes to study man's mental condition in order to learn, if it can, some of the reasons for unsocial actions. Just as the Court has now the power to ask a man to plead guilty or not guilty, so they should be given the power to ask any offender to make a plea as to his mental condition. In this way society is given the opportunity to study the many obviously deficient criminals and is protecting the individual that the court cannot now protect.

The plan advocated by the Negative serves a two-fold purpose equally. It gives a man the power to defend himself by giving him the right to the plea of insanity, and second, it

gives society the right to protect itself by demanding that he make a plea.

FIRST NEGATIVE REBUTTAL

James Robertson, Pacific

Mr. Robertson will again point out that we of the Negative are really pleased to have this agreement that exists between the University of Montana and ourselves. It seems that if all debates could be conducted on this mutually satisfactory standard that there would not be the intense quibbling that sometimes occurs.

For the time being let us analyze the cases presented by the gentlemen from Montana and see wherein this debate really does lie—there is a question of insanity involved here someplace I am sure. In the first place, they say very little about the plea, that is, they do not particularly recommend its abolition but they have gone to great length, and I have decided to review for your particular benefit certain cases of notorious criminals who have apparently gone free. Ladies and Gentlemen, have they gone free by reason of the fact of the plea of insanity that they availed themselves of or was it not due to an ignorant system or poor court room procedure, composed of ignorant judges and juries and inefficient lawyers? Actually it is the court room procedure that is at fault and not the plea of insanity.

Now they have admitted that the worst side might have all the lawyers; they agree that the lawyers don't know very much about the question. They have admitted that the judges are very very inefficient. They state that all the juries are doing are the duties they were instructed to do some hundred years ago, but after all, they have not said anything about the plea of insanity. I understood that the question was to be "Resolved: that the plea of temporary insanity as practiced in the courts today should be abolished by law." They have not mentioned anything about the plea but they have agreed with us that the court room procedure is very inefficient. Therefore, we both agree that the plea of insanity is perfectly satisfactory, that it is the court room procedure that needs modification.

Going on from this point, therefore, let us analyze what the Negative has already presented with regard to modification. We have noted how both sides pointed out the defects in the present system—consequently we may very well retain the plea as we all understand it; in other words, a man pleads guilty, or not guilty by reason of insanity. That is what we understand by the plea, and we are not prepared to stand here and discuss technicalities that involve our families and their relations as extensively as did the gentlemen from Montana.

Let us do what the second speaker suggested, and get at it by abolishing the inefficient system of court procedure so as to introduce expert witnesses that are really expert—to train the judges so that they are no longer members of that profession previously mentioned—let the lawyers be trained so that they no longer have for their purpose and aim the evasion of the law.

I imagine that with all due courtesy to the opposition we ought to consider their plan. Briefly, they state that we ought to take all these matters out of the hands of the court and place them in the hands of an expert board of psychiatrists. I should like to ask the gentlemen from Montana whether an expert board of horse doctors would not be just as satisfactory. Apparently that is the situation we have in existence today. If anybody has the effrontery to get up in front of the court and maintain that he is an expert witness he can do so whether he is a chiropodist or a corner grocery man and his technical evidence is introduced before the gullible jurors and they believe every word of it. In such a case, Ladies and Gentlemen, if you were serving on a jury, would you know just exactly whether or not the defendant was insane? Consequently, we of the Negative heartily recommend that we abolish this system. We suggest that we train the judges and the lawyers until they are no longer content to quibble over technicalities and hypothetical questions that have absolutely no foundation whatever in reason or logic—so after all, you see both the gentlemen from Montana and the representatives of Pacific agree that the plea of insanity as it is introduced in the courts should he retained but the Court procedure should be modified.

In the first place, we have pointed out that the evils which are commonly attributed to the plea of insanity are actually

not evils due to the plea itself but are rather due to the maladministration of our court procedure; that it is an antiquated system which should be abolished, and something more in keeping with science should take its place. We of the Negative have pointed out to you that while some men may have been permitted to go free after availing themselves of the plea of insanity a great many criminals have gone to jail who actually should have been committed to asylums for the insane. In a scientific system of court procedure we will do away with this trouble, and in its stead, have offered a system which will adequately take care of criminals, sane and insane.

FIRST AFFIRMATIVE REBUTTAL

Russell Smith, Montana

Well, it is my turn to come before you again. The debate really centers around the questions of various plans and what the elements of these plans are. We find that possibly there are two elements agreed upon by both sides as being the fundamental purpose of the criminal law; first of all, the protection of society; and second, the protection of the individual, that is, giving humane treatment to the individual. Thus far, this evening, the faulty part of the insanity plea seems to be that society is not adequately protected in that a number of criminals are escaping justice and the gentlemen from Pacific have concurred in this. Then we both have elaborated upon the faulty procedure existing at the present time. Now let us look at the two systems which have been presented and see whether or not the system we have proposed will remedy first the defect in the protection of society. Now the gentlemen from Pacific tonight presented a very able discussion of this matter of the insanity plea, yet, during their entire discussion, they have looked at the plea from what we believe to be the wrong angle. First of all, we believe that the plea is procedural and not substantive. In other words, we believe that the plea is a legal thing, a technical thing. If you will look under "Words and phrases legally defined," in Bouvier's *Law Dictionary* or Black's *Law Dictionary* you will find that a plea is that which brings a defense of the defendant before the court and must be presented by the defendant. In other words, a plea

is not an absolute defense—a plea is merely a mechanical procedural thing which brings a certain defense before the court, and we believe that the abolition of the plea is entirely within the grounds as given by our case this evening. We believe that the plea can be abolished and still retain the substantive justice of the thing. We believe that the plea can be abolished and, by being abolished, do away with faulty court room procedure. The ultimate desire of society is the protection of society. We do not desire to punish insane persons—certainly not. Under the plan advocated by the Affirmative this evening, we would examine all criminals after conviction, and, if they were insane, they would be sent to the insane asylum after the verdict of guilty. In other words, the only difference in the present system and our system is that the matter of insanity would be taken out of the court room and the insane person declared technically guilty. However, from the standpoint of substantive justice, we would not change the effect of the treatment. Today the insane person is taken care of in the insane asylum and we would do exactly the same thing. However, we believe that the insane person should be forced to remain in the insane asylum and should not escape as he does today. For that reason, we say that the abolition of this plea of insanity will label the insane person guilty and place him in the insane asylum. We must declare the insane person guilty and under the legal definitions of guilty we can do this. The second speaker from Pacific tonight has given us the elements of a crime, that is, you must have act and intent. In other words a man who does an unintentional act is not guilty of a crime. My speech tonight is not any crime as I did not intend it to be as bad as it is. The definition that insanity relieves a man from guilt is merely a legal thing. We have seen that the law changes, as the law of coverture has changed—at one time the courts held that a married woman was presumed not to be able to commit a crime as a married woman was always presumed to act under the duress of her husband. But the courts found out a few things about women and changed their minds. Today we find that the court recognizes the old laws of coverture no longer, and a married woman can be as guilty of crime as her husband. In fact, we are simply asking for a legal definition so that insanity is no longer a procedural defense and we would treat the insane

exactly as they are treated today. I want to add that as long as the plea of insanity is in the law—as long as a person is not guilty by reason of insanity—a writ of habeas corpus will always release this person from the insane asylum. We believe that, instead of the verdict of not guilty by reason of insanity, we should have the verdict of "guilty, but insane." This will place our criminals where habeas corpus will not reach them; the only way we can do this is by abolishing the plea of insanity as it is used today. San Francisco, some years ago, witnessed an earthquake which did tremendous damage. But that earthquake did not do as much damage as our friends would do to our system of jurisprudence as it exists today. First of all, they would remedy the judge system, they would create a new type of judge, a learned judge—it would easily take ten or twenty years for him to learn all the things that they demand he should know. Then they would do away with most of the rules of evidence which are, as they admit, extremely valuable in most types of cases. Then they would convert the lawyers, and, being a lawyer, I think that is almost impossible. Then they would change the system of expert witnesses—in fact, they would remedy the whole court room procedure over one matter which requires only examination after conviction. We say, take the plea of insanity out and let a board of psychiatrists examine after conviction, and society will be protected, the individual will be protected and at the same time these faulty procedural difficulties will be eliminated.

SECOND NEGATIVE REBUTTAL

Wesley Sawyer, Pacific

Mr. Smith, the first speaker for the Affirmative this evening, in his constructive speech, told us a lot of very gruesome details, showing how many criminals who were found insane later by a writ of habeas corpus escaped. But just because the dear old Constitution of the United States gives a man the right to a writ of habeas corpus we certainly cannot blame the insanity plea for the fact that there have been men who have escaped from insane institutions due to improper administration after they have been confined in those institutions. The greater part of his speech was spent entirely in showing how the writ of

habeas corpus was responsible for the escape of many criminals from institutions.

We will agree with him in this respect, but certainly, this evening, we have taken the issues of this debate on the plea of insanity, and whether the plea should be abolished, and not whether or not, after a man has succeeded in establishing that plea and has been confined in the proper institution, he was let out while still insane, due to various shifting of the cards by some capable but so-called corrupt lawyer. We still maintain that it is not the insanity plea, as a plea, that is at fault but rather the administration these pleas receive after they have been established.

The gentlemen also brought out the fact that, when a man has a second hearing, the public has forgotten all about the gruesome details of the crime. After all, I thought I had pointed out in my speech that society is not interested in punishing the individual but rather is interested in, first, our own protection, and second, the protection of the individual as a member of society, and, when any man is suffering from a mental disturbance, rather than punish him from a penalistic standpoint we desire to treat him and cure him if possible.

If we were to take a legal attitude as to crime altogether—just what is crime, from a legal standpoint? It is nothing more or less than breaking laws. Therefore, Ladies and Gentlemen, I advocate the abolishing of all the laws, thus doing away with all crime.

The various notorious murder trials cited by Mr. Williams constitute one of the greatest reasons, we believe, why the insanity plea should be retained. Certainly a decade which has produced such notorious trials as the Mooney and the Sacco-Vanzetti trials proves that we are not yet ready to abolish the plea of insanity altogether, and give the ultimate decision into the hands of a board of alienists, unchecked by that protection which the plea undoubtedly gives to the individual.

Just for a moment, let us consider the entire case of the Affirmative this evening. The first speaker told us a lot of wild tales about men who, having once pled insanity, escaped and kidnapped a little girl, and other terrible crimes. This was all due, he said, to the writ of habeas corpus. We see no connection with the fact that they once pled not guilty by reason of insanity. The second speaker got up and gave a

carbon copy of my colleague's argument for which we are all very thankful, but we do not believe, Ladies and Gentlemen, that they have given any valid reason why the plea of insanity, *as such,* should be abolished.

Our system as outlined meets every objection. In the first place, we have provided for a plan which will produce judges and not politicians; second, we have cleaned up the field as to the expert witness; and third, when questions of mental conditions are involved, we will leave the decision, not with juries composed of laymen with no knowledge of such subjects, but to a board of trained experts, and, after the decision we will have a scientific system of penal reform where criminals will be studied and treated, not punished. Honestly, we believe that the retaining of the plea will be beneficial from two standpoints, first it gives the individual protection by allowing him to make the plea; and second, it protects society by demanding that he make a plea as to his mental condition.

SECOND AFFIRMATIVE REBUTTAL

Robert Williams, Montana

Most of the arguments that have been advanced tonight by my friends from Pacific have been just about as hard to follow as chasing a black cat in a dungeon without a light. It is apparent that we are all dissatisfied with the present status of insanity as a defense to a charge of crime. But whereas we would remedy the matter by having our legal system submit to a minor operation to remove this defect of the insanity plea, our opponents would have us destroy the legal system of today and graft the defect of the insanity plea onto a new one. To this we make our objections. It is plain that our opponents are going to do a lot of ridiculous things, make many more changes than we propose to make. They are going to do away with the kind of judges we have today and establish some type of fabulous judge the like of which has never been heard of before; they expect to make all these expert witnesses submit to some sort of examination to ensure their competency—I don't know just how this is to be done. And they would do away with the attorneys. Now I object to that, hoping to be a lawyer myself someday. And they

are going to do away with ignorant juries. But they have run themselves into some very bad traps. In the first place, if they are to do away with the jury and laymen and make judges pass upon the question, in effect they have abolished the plea, because, as you will remember, the plea is something that is brought in by the defendant and made by him; and, if we are to place it entirely in the hands of the Court, or a board of experts, to determine the question of sanity or insanity, either one or the other, we are, in fact, effectively abolishing the plea. That is just one of the inconsistencies of their position.

They have talked a great deal about doing away with the substantive right of an insane person to use the insanity plea as a defense. I think we quite satisfactorily pointed out that our system will effect the same thing. We would let a really insane person take advantage of his insanity. We are going to let a board of psychiatrists, after conviction, take charge of it, and we think this is much more reasonable. They would like to abolish the jury and make every one plead as to his sanity or insanity. In view of the fact that our courts are already greatly congested even under our present system, where a person does not have to plead insanity unless he is guilty, I don't see where they are going to get all these judges and courts that will be necessary to handle this mass of examinations.

They entirely ignore this matter of the writ of habeas corpus. I will admit that the writ of habeas corpus is a very hard thing to understand but that is no reason why it should be ignored. And if we are to let this board of fabulous judges pass upon a man's sanity we still have to face that writ of habeas corpus, because, when Remus could convince a jury that he was insane, and Darrow could convince the judge that Loeb and Leopold were so insane that they should not be hanged, I can't see where this plan is to give us any protection against the sane man who is clever enough to plead insanity and get away with it; if he is considered as not guilty he can use the writ of habeas corpus at any time.

On down the line, they say they are not only trying to retain the plea, but expand it. That is not the only thing they are going to expand, they have expanded a lot of things in this debate, particularly their imagination. They say that we would

not give the individual the right to plead insanity effectively, and that they are giving society the proper protection for itself, by demanding that they make this plea. Why not, as we have suggested, take all those convicted of crimes and examine them, and, if they are found to be insane, send them to an insane asylum. The fact is that about 43 per cent of the convicted criminals are dangerously insane; we think this illustrates the necessity of examination after conviction, and that such a system would cut down this percentage by about 43 per cent. In closing, I want to thank everyone for the courteous audience that has been accorded us. We realize that the positions of both teams in this debate have been so similiar as to be rather trying on the interest, but you have been very courteous both to us and to our opponents and I want to express our appreciation of you.

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CHAPTER VII

THE JURY SYSTEM

OHIO STATE UNIVERSITY

versus

UNIVERSITY OF ILLINOIS

RESOLVED: *That in all trials thruout the United States, a judge or a board of judges be substituted for the jury.*

This is a stenographic report of the debate between an Affirmative team representing Ohio State University and a Negative team representing the University of Illinois which took place in the University Chapel of Ohio State University, Columbus, Ohio, on Thursday evening, March 28th, 1929. The Judge for the evening was Professor Charles R. Layton, of Muskingum College, who rendered a verdict in favor of the Negative. This report has been secured for the Annual by W. Hayes Yeager, Acting Head of Public Speaking for the University of Illinois.

BRIEF

THE JURY SYSTEM

AFFIRMATIVE

INTRODUCTION:

A. Our system of law is divided into numerous divisions or classes of cases.
   1. Common law cases.
   2. Equity cases.
   3. Cases of maritime, bankruptcy, probate, divorce, etc.

B. In only one group of all these cases has the right to trial by jury ever existed.
   1. This is the group of common law cases.
   2. In all the other classes, the trial is in charge of the judge.
      a. He finds the facts, applies the law to the facts, and renders the verdict.

C. The Affirmative advocate that the judge system be extended to common law cases also.

I. There is no longer any justification for continuance of the jury system.

A. Conditions that once justified it no longer exist.
   1. At one time, in England, when judges were selected only from a privileged noble class, the jury system may have been necessary.
      a. This is not the case today for there is no noble class.
   2. The King once used the jury as a collector of facts for his personal benefit.
      a. This function has been entirely eliminated.
   3. Our people need not fear injustice from their judges.

a. They are elected directly by the people or appointed by representatives elected by the people.

B. The tendency is, already, in favor of discarding the jury system.

1. England has been gradually discarding it.
   a. The right to trial by jury is now granted at the discretion of the judge.
2. In the United States, every new and modern system of justice points toward the elimination of the jury.
   a. Children's courts, in New York, may try felonies of the highest degree without the intervention of a jury.

II. The jury has proved itself glaringly inefficient.

A. In determining and judging facts.

1. The qualifications of the juror are such as to make him incompetent to decide the complicated matters usually presented to juries.
   a. No educational qualifications exist for jurors.
2. Experience shows cases are more efficiently handled before a judge.
   a. He is trained for such work.
   b. The jurors are usually inexperienced and unaccustomed to such exacting work.
   c. The appeal is often to their emotions and prejudices.

B. In applying the law to facts.

1. The average juror has not the training, background or capacity to apply these complicated laws to the facts.
   a. This was illustrated in the recent Sinclair-Doheny trial.
      (1) Questions put after the trial to the jurors, by a correspondent of the *New York World,* revealed the absolute ignorance of the jury regarding the fundamental facts of the case.
   b. In the words of Judge Knott,

(1) "Because of the inefficiency of the jury system the United States is considered the safest place on earth in which to commit murder."

III. The extension of the judge, or board of judges, in place of the jury, to common law cases is the logical solution for our present difficulties.

A. It is in close harmony with the modern trend toward efficiency.

1. Except in common law cases judges are already determining the facts, applying the law and rendering decisions.

a. This practice would not be so extensive today unless it had proved satisfactory.

2. The requirements of other trades and professions have been raised.

a. Efficiency is demanded everywhere.

B. The system of a judge, or board of judges, brings into action competence and efficiency which the jury never knew.

1. Judges are men of college training and long experience.

2. They have natural ability and talent.

3. They can distinguish between sheer emotional appeal and actual facts.

C. It establishes a direct responsibility to the people on the part of their instruments of justice.

1. Juries answer to no one for their decisions.

2. In contrast, judges are bound to make their decisions in the light of justice.

a. Their office depends on actual service.

Negative

I. There is a vital need of the jury.

A. The judge is not capable of deciding questions of fact in law as he is in cases of equity.

1. The questions of fact in an equity suit are not numerous.

a. Practically all the questions are those of construction of written instruments.

2. What questions there are do not need to be decided immediately.
   a. Usually the lawyer takes the case under advisement and gives a decision later.
   b. In law actions, a decision must be handed down at once.

3. Labor injunction cases in Pennsylvania and West Virginia show judges are not competent to decide questions of fact.
   a. There are many more questions of fact in an injunction case than in any other equity proceeding.
   b. The decisions of judges in injunction suits have been condemned by all who knew them.

B. The decision is much more important in a case in law than in one in equity.
   1. In equity it is seldom that the decree will give damages.
      a. The effect is usually to keep a person from doing something or to force him to do something.
   2. In law, the general effect is to deprive a person of his money, his liberty or even of his life.

C. In probate courts, the judge does not decide questions of fact.
   1. If one comes up, it is taken over to the law court to be decided.

D. Practically all of the difficulty that has existed is due to other elements of the system and not to the jury.
   1. In the report of the Illinois Association for Criminal Justice, every criminal case in Illinois between 1917 and 1927 was examined.
      a. In this report, 70 per cent of the trouble was attributed to the prosecutor, 25 per cent to the police, and only 5 per cent to the courts and juries combined.
      b. Fifty per cent of the charges were found to be waived in favor of pleas of guilty to lesser charges.

c. Often the judge took the case under advisement for unreasonably long periods.
   1. His errors caused appeals.

d. Meritorious cases were lost because of the wrong form of action, misjoinder of causes, or technical wordings.

e. After eliminating the cases due to other causes, only a negligible portion remained for the jury.
   (1) Only sixteen cases out of a thousand in Chicago and Cook County were acquitted by a jury.

2. The few faults which are sometimes associated with the jury are not inherent but can be easily corrected.

a. Commissions can be appointed to check jury lists, eliminating the unfit.
   (1) The remainder can be classified as to occupation, ability and primary interests.
      (2) This would save time and money, as only those qualified need even be considered.
      (b) It would give us far better jurors.

b. Another evil could be eliminated if jurors could express their preference as to their time of service.
   (1) There would be fewer excuses—and so less time lost in selection.

c. The number of peremptory challenges could be reduced.
   (1) This would prevent the corrupt attorney from challenging good men without first showing just cause.

d. The long and protracted examination of veniremen could be cut to two brief questions.
   (1) This is done in England with great success.

e. A booklet could be sent to prospective jurors outlining the nature of their work.
   (1) This has been done successfully in several western states.

II. The jury system is basically the best plan yet devised to guarantee the rights of the people.
  A. The jury is better qualified than the judge to determine questions of fact.
    1. It is not hampered by legal concepts and training.
      a. The facts to be found in our courts are facts of common life and require commonsense and a knowledge of human nature to solve them.
    2. Many errors occur on the part of the judges because of lack of technical knowledge.
      a. The judge cannot be acquainted in all the various walks of life.
  B. The jury rarely errs in its decisions.
    1. Eminent jurists have testified to this conclusion.
    2. The Sinclair-Doheny trial was only an exception to the general rule.
      a. For every Sinclair-Doheny trial presented there are thousands of cases where the conclusions were reached on the basis of pure justice.
    3. The few faulty verdicts handed down are not due wholly to the jury.
      a. Often constitutional rules of procedure balk justice.
        (1) A man, tho implicated in a felony, need not testify.
        (2) A man cannot be placed in jeopardy twice.
          (a) When the state loses the case there is no appeal.
          (b) When the criminal loses the case, he has a great many chances for reversal in the upper court.

III. The right to trial by jury is necessary.
  A. It would be dangerous to give the judge, or board of judges, complete control.
    1. The people would not be afforded sufficient protection.
      a. In every criminal case the state is a party to the suit.
        (1) If the judge, or board of judges, were substituted for the jury, we should have

the decision rendered by one of the parties to the trial.

b. Many eminent men have recognized the protection the jury has given to the people.

2. Political influence would be brought to bear on the judges if they had complete control.
   a. It opens the door of the judiciary to the political boss.
      (1) When a man refuses to obey the dictates of the boss he is soon removed.
         (a) Judges, as a rule, are elected to the office.
         (b) Attempts of this sort are known to have been made.
   b. The right to trial by jury has prevented attempted control of the judge from having any appreciable effect.

THE JURY SYSTEM

OHIO STATE UNIVERSITY

versus

UNIVERSITY OF ILLINOIS

PRESIDING OFFICER

Professor C. C. North

The Ohio State University is very happy to welcome the representatives of the University of Illinois tonight. It is not necessary for me to say that we always welcome Illinois to Ohio State in any capacity. They are good sportsmen, they are hard fighters, and our relations have always been most pleasant. This contest tonight is a continuation of these friendly types of fighting.

The question this evening is one that has been debated in one form or another to a considerable extent this year. Having had the pleasure of judging some of the debates this winter in the Ohio colleges on this question, I may say that it seems to me one of the best questions that has been up for debating for a number of years.

As is customary, the time-keepers will warn speakers two minutes before the expiration of the time allotted for constructive speeches, and one minute before the end of rebuttal.

The Judge for the evening is Professor Charles R. Layton, of Muskingum, whom we are always most happy to have with us. He is a man who knows debating, I happen to know from experience and is a gentleman and a fine sportsman himself, as I have also experience in knowing.

We will now begin the debate, Mr. Clayton H. Schug presenting the Affirmative.

FIRST AFFIRMATIVE

Clayton H. Schug, Ohio State

Ladies and Gentlemen: We wish to extend to the men of Illinois our hearty welcome to Ohio State.

The proposition for debate this evening is: "Resolved, that in all trials thruout the United States a judge or board of judges should be substituted for the jury."

For the purpose of this debate, it is not necessary to go into any extended details in regard to our complicated legal procedure or history, because the issues raised by the proposition, as it is stated, are few and simple.

First of all, our system of law is divided into numerous divisions or classes of cases. One class is known as common law cases, another class as equity cases. Besides, there are cases of maritime, cases of bankruptcy, probate, divorce and numerous others.

And right here in the beginning, we wish to make it clear that there never has been a time when the individual was entitled to the right to trial by jury in all cases, nor does that right exist today. I repeat: that right never existed. In all of these various classes of cases, there is only one class, known as common law cases, in which the right to trial by jury has ever existed. In all of these various other classes of cases, falling in groups other than the common law group, the trial has been completely in charge of the judge, the judge who finds the facts, applies the law to the facts, and renders the verdict.

Now, that is the general situation in our system of justice today. Trial is had before a judge alone in almost all of our cases, and only in a very few cases is there a trial by jury.

We, the Affirmative, therefore, advocate that the judge system, the system which is already in use in the vast majority of our cases, merely be extended to the one class of cases in which trial by jury is now used.

At this point, we should like to ask the men of the Negative a question: "What is the distinction between common law cases, where trial is had before a jury, and all these other various classes of cases, where trial is had before a judge alone?"

For the purpose of clearness, I will repeat our question: "What is the distinction between common law cases, where trial is had before a jury, and all of these various other classes of cases, where trial is had before a judge alone?"

We feel that the answer to this question is very important. We feel that if a judge is competent to try without a jury our most complicated cases of law, dealing with admirality, equity, bankruptcy, probate and divorce, we also feel that a judge is

competent to try, without a jury, those cases known as common law cases.

We believe that a system of justice, based on the experience and training of a judge or board of judges, elected directly by the people, or appointed by representatives elected by the people, is desirable. We believe it to be superior to the unscientific and untrained jury of twelve persons, chosen by means of chance, regardless of their qualifications, and placed in positions of responsibility and authority. Twelve persons, chosen at random, the old gray-haired conservative man and the young man with the radical mind, the Catholic and the Protestant, the Jew and the Gentile, the black and the white, the rich and the poor, busy housewives, men who could not earn a scanty three dollars a day in any other walk of life, men and women who care little for and are uninterested in judicial proceedings, these people, chosen by means of chance, regardless of their qualifications, are placed in positions of trust. Yes, positions of trust, deciding cases involving life and death, while the witty attorneys appeal to their emotions and prejudices on the basis of religion, nationality, race, color and wealth. And the so-called wide-awake America looks to such a heterogeneous group of people for justice.

We believe that the system which we advocate, a judge or board of judges, will remedy this defect. It is our purpose in this debate to give the reasons for our belief.

Now, first of all, let us admit, just for the sole purpose of argument, that perhaps the ancient conditions in England at one time did justify the existence of the jury system, for there was a time in England when the judiciary was composed of judges, selected only from a privileged noble class. But that is not the case today. Our judges are not selected from a privileged noble class, for there is no nobility. Besides, the King at that time used the jury as a collector of facts for his own personal benefit.

But these justifications have been eliminated and no longer exist, and therefore naturally the jury system should be abolished unless the Negative can show some new reasons for its existence. I repeat: these old justifications for the jury system have been eliminated; the jury is no longer needed as a political protection or as a protection against the judiciary, for tyrannical power cannot be said to exist.

And furthermore, the judges', true and original function, the function of collecting facts for the King, this, the very root of the jury system, has been entirely eliminated. Today we do not hear of President Hoover hand-picking judges to carry out his own personal whims or even the policies of the Republican Party. Times have changed. You and I are living in a democracy, and the government itself is under the absolute control of the people. All of our judges are elected directly by the people or appointed by representatives elected by the people.

We do not question the integrity of our federal judges nor do we doubt the integrity of those men who sit on our state benches. The people of Ohio elected these judges to office, and the poor man of Ohio does not fear injustice from such judges as these.

Therefore, Ladies and Gentlemen, it is clear that the Negative cannot possibly contend that the jury should be maintained because of the conditions which once may have justified its existence, for I have shown to you that each and every one of these evil conditions, political and social class distinctions, judicial tyranny and political tyranny, have all been entirely eliminated.

Now, the history of English jurisprudence reflects these changing conditions. England herself has been gradually discarding the jury system, as she gradually discarded the evil political and social conditions that once demanded the jury system.

In England where the jury arose, the right to trial by jury is being curbed by means of a statute which provides that trial by jury is at the discretion of the judge.

William H. Blymer, a member of the New York City Bar, says, "Use of trial by jury is no longer the rule in common law cases in England, but in each case it depends upon a special application to the court." Thus we can see the jury being eliminated even in England, where it arose.

In our own United States every system of justice that is new and modern points toward the elimination of the unsatisfactory jury.

Why, the State of New York has even gone so far as to provide for an organization of Children's Courts, which have jurisdiction to try felonies of the highest degree, affecting children, without intervention of a jury.

Ladies and Gentlemen, we have seen thus far that perhaps the ancient conditions in England at one time did justify the jury system. We have also seen that, logically enough, England has tended to discard the jury system, as she gradually discarded the evil social and political conditions that once may have justified its existence. And even in our own United States the jury system is being eliminated since its justifications no longer exist.

Since the conditions which once may have justified the jury system have been eliminated; since these conditions no longer exist; since today there are no justifications for the jury system, we, the Affirmative, maintain that in all trials throughout the United States, a judge, or board of judges, should be substituted for the jury.

FIRST NEGATIVE

Albert Hallett, Illinois

Ladies and Gentlemen: First, may I say that we do agree in one thing this evening, and that is that we are certainly glad to come here from Illinois to reopen our debating relations with the Ohio State University, after approximately twelve years.

But we do not agree with our opponents when they say that the need for the jury has passed. We do admit this evening, My Friends, that the specific need for the jury, for which it was established, is gone, but we contend this evening that there is a vital and crying need for the jury.

Our second and third speakers will show just why the jury is needed today, because it is a better judge of fact, and because it is needed to protect America from the oppression of judges.

Our opponents have asked us what is the difference between law and equity. The questions of fact in an equity suit in the majority of cases are not numerous. Practically all of the questions are those of construction of written instruments. This is true in cases of wills, of bills to quiet title, specific performance, contracts, partition, reformation and rescission. There are some questions of fact, but the judge does not have to decide them immediately, but he can, and does in practically all cases, take the decisions under advisement, and renders the decision later.

If we were to admit that he was capable to decide questions of fact under such circumstances, it would not in any sense

prove he was capable of deciding them in law actions, where the decision must be handed down immediately. We do not admit his capabilities to decide questions of fact, even when he has taken them under advisement for long periods.

To show his lack of capability to decide questions of fact, we need only to refer to the labor injunctions of West Virginia and Pennsylvania. In an injunction case, there are more questions of fact than in any other equity proceeding, and the decisions of judges in all labor injunction disputes have been condemned by those acquainted with them, and they are contrary to all principles of justice.

Another very essential difference to be noted is the importance to be attached to the decision of fact in an equity and in a law case. In equity it is very, very seldom that the decree will give damages, but the effect is merely to prevent a person from doing something or to force him to do something, while in law the general effect is to take away money or to deprive a man of his liberty or even of his life. These are essential differences between law and equity, and such differences as will not warrant the judge's being used in law cases, though he may sometimes be used in equity.

They have also inferred that probate courts were quite like law courts. If a question of fact does come up, what happens? The judge takes it over to a law court to decide. Then and there it is decided and then it is taken back to the probate court. There is the essential difference between the probate and the law court. He does not decide the question of fact.

Now, Ladies and Gentlemen, before beginning our constructive case, we will point out what our opponents must prove. It is not enough to show that every one ought to be allowed to waive trial by jury, but they must show that every one must be denied the right to insist upon trial by jury. Nor is it enough for them to condemn our judicial system, but they must trace every evil of which they complain directly to the jury.

Now, in proving that a judge or board of judges, should not be substituted for the jury throughout the United States, we will prove, first, that practically all the trouble in our present judicial system is due to other elements of the system and not to the jury.

Conditions in Illinois have been such that the Association for Criminal Justice was formed, including Amos Miller, President

of the Bar Association, Dean Harno, of the University of Illinois, Judge Bruce of Northwestern University, and others foremost among the legal authorities of our state. These men examined every criminal case in Illinois between 1917 and 1927, completing their report only this month.

They blame 70 per cent of the trouble on the prosecutor, 25 per cent on the police, and leave only 5 per cent for the courts and juries combined. On page thirty-nine they say that the responsibility for the most part rests upon the prosecutor. Fifty per cent of the charges are waived in favor of pleas of guilty to lesser charges. It appears that the only cases that get before the jury are those in which the prosecutor and the defendant are unable to strike a bargain.

Now, another evil is that the judge frequently takes cases under advisement for unreasonably long periods and his errors cause appeals. This survey showed that 42 per cent of the cases appealed in Illinois are reversed.

They found that the procedure constituted another evil. Meritorious cases are lost because of the wrong form of action or misjoinder of causes, or because of technical wordings.

In People vs. Goldberg, (287-Illinois-238), the defendant had been convicted on fifty counts, and on appeal the Supreme Court approved of the first 49, but, since in the 50th the Prosecutor had written Holdberg instead of Goldberg, the entire case was reversed and the defendant set scot free.

Most of you blame the Sinclair-Doheny case on the jury, but this is due entirely to the federal rules on conspiracy, under which not even their Judge could have convicted.

Finally, the Association found, after eliminating those cases clearly due to other causes, that only a negligible portion remain for the jury.

Raymond Moley, Professor of Law at Columbia University, says that more than 96 per cent of the cases are eliminated before they get to the jury.

In the Illinois Committee's report, they say that, assuming every single acquittal to be a failure of justice, which, of course, it is not, this still would account for less than 2 per cent of the cases. Only sixteen cases out of a thousand in Chicago and Cook County are acquitted by a jury.

It is evident that, even though acquittals by a jury were to be reduced by one-half, this would still do little, if anything, to

swell the convictions, because of the insignificant percentage tried by them.

Practically all of the trouble in our present judicial system is clearly due to other elements, such as the prosecutor, police, judges, procedure and defective pleadings, and is not in any way traceable to the jury.

Our second contention is that those few faults which are sometimes associated with the jury are not in any sense inherent, but they can easily be corrected.

Critics charge that the jury selection wastes time and money, that they do not have the necessary intelligence, and that they are ignorant of their duty.

To answer these charges, we propose practically the same reforms as advocated by the Association for Criminal Justice, part of which are now before our Legislature.

We propose, first, that commissions be used to compile the jury lists, eliminating those unfit, and classifying the remainder as to occupation, ability and primary interests. This would reduce the number summoned and would save time and money, since only those best qualified need even be considered, and it would give us far better jurors, since only the most intelligent and experienced men in their lines would be chosen.

Another evil could easily be eliminated if jurors could express their preference as to time of service. This would reduce the time spent in selecting them, because of fewer excuses.

Thus far we have dealt with the problem before the summons is issued. We further propose to reduce the number of peremptory challenges, as suggested not only by the Association for Criminal Justice but the Cook County Judiciary Committee headed by Chief Justice Charles De Young, of the Illinois Supreme Court. This would prevent the corrupt attorney, who seeks to get an ignorant jury into the box, from challenging good men on the jury without first showing just cause.

Another evil is this long and protracted examination of veniremen. We propose that they be asked only two questions, first, are you related to either of the parties to the suit, or personally interested in its outcome; and, second, do you know of any reason why you cannot render a fair verdict in accordance with the evidence presented before this court?

This system is used in England with great success, and protracted examinations are not permitted. We believe the same results can be obtained in this country.

Another evil which can easily be done away with is the claim that jurors are ignorant of their duties. The Association for Criminal Justice sent out questionnaires to every juror serving in Illinois in the last ten years, and thousands upon thousands replied, suggesting booklets to be used to educate jurors, telling them where, when and to whom to report, the nature of the work, its place in our system, the time of service, and the hours and accommodations. This booklet has been actually used with great success in various western states.

I. T. Richardson, Judge of the Fifth Judicial District of Kansas, says he has used it in Chase and Coffey counties for the past two years, with a great increase not only of efficiency but in attendance, showing its great value throughout the country, were it to be applied generally.

Summing it up, those few evils sometimes associated with the jury are not in any sense inherent, but can easily be done away with through our proposed reforms, first, that commissions be used to classify jurors, that they be allowed preference as to time of service, that peremptory challenges be reduced, that the examination of veniremen be limited, and that they be required to read the suggested booklet.

Briefly, we have shown that practically all of the trouble in our present judicial system today is clearly due to other elements and not to the jury, and, second, that those few faults which are sometimes found in the jury are not in any sense inherent, but can easily be corrected.

Having concluded the constructive speech, we should like to ask our opponents three questions:

First, are you in favor of abolishing the grand jury and the coroner's jury, as well as the petit jury?

Second, will you give us a detailed and concrete plan of the judge system which you intend to substitute for the jury?

And, lastly, is your judge in common law going to function the same as the judges do in equity today?

SECOND AFFIRMATIVE

Harry Dworkin, Ohio State

Ladies and Gentlemen: My colleagues will answer the questions put forth to us by the gentleman on the Negative.

We feel that the opposition has failed to answer our question adequately. To recall the question put forth to them by the gentleman on the Affirmative: What is the fundamental difference between cases involving common law and cases involving all other types of law to warrant the distinction of a jury in one type of case and not in the other?

Let us briefly summarize our stand this evening. Law is divided into several branches. Among these we find cases involving probate, chancery, bankruptcy, divorce and common law. At the present time, the right to trial by jury is used only in cases involving common law.

The functions of the jury are two-fold: first, to determine and judge facts; second, to apply the law to the facts.

The jury has proved itself glaringly inefficient both in judging facts and applying the law to the facts. At the same time, however, the judge has competently exercised these two primary functions in cases where the right to trial by jury does not exist.

The opposition has declared that these defects which we have outlined are not inherent in the jury system, but are due to other causes. We disagree. These defects are inherent in our system and cannot be changed. The only remedy is the abolishment of the jury system.

Certainly the low intellectual qualifications will always remain. The exemptions cannot be cut down. We cannot take men whose presence is vital to their community. We cannot take these men of responsibility out of society in order to serve on the inefficient jury. Educational qualifications will be hard to make and would lead to a distinction which would cause resentment. Surely the tendency of jurors to be led by prejudice, bias, emotion and passion cannot be changed by legislation. They are inherent evils and will always remain.

Let me quote from a recent article in *Scribner's*, "Jury trials are largely to be blamed for the increase in crime. The small percentage of criminals eventually convicted by the jury emboldens the criminal and invites contempt of and disregard for law. Only one out of seventy-two murderers in Chicago is given the death penalty prescribed."

Rupert Bullivant, Judge of the District Court of New York City, said that the qualifications of the juror are such that his intelligence is actually that of the lower classes, so as to make

him incompetent to decide the complicated matters usually presented to the jury. No educational qualifications whatever exist for jurors.

Now contrast this glaring inefficiency of the jury system with conditions which prevail where the jury system has been eliminated. More than 90 per cent of all criminal cases tried before the criminal courts of Baltimore were heard before judges without a jury. Two courts are sufficient to care for the criminal docket of a city of 900,000. Contrast this efficiency with our overcrowded conditions found in courts still maintaining the jury system.

Judge Jacob Marks of the Municipal Court of New York, said that "in the Municipal Court of the City of New York, which is, according to the number of cases tried, the busiest court in the world, 95 per cent of the cases are tried without a jury, thus rendering justice efficiently, promptly and inexpensively."

Ladies and Gentlemen, as my colleague has said, if the dangers to citizens, against which the jury was instituted as a political safeguard, no longer threaten, and if modern tendencies are such that juries no longer function as they were intended to function, then it must be evident that the jury system has outlived its usefulness, because the reasons for its continuance no longer exist. In the words of the great educator, William Lyon Phelps, in *Scribner's Magazine,* "trial by jury is a good thing that has outlived its usefulness."

As I have shown you, the function of the jury is two-fold, first, to determine and judge facts; second, to apply the law to the facts after these facts have been determined.

As a member of the Affirmative side of the proposition, I shall add to the discussion by submitting evidence to show that the jury system should be abolished because it has failed in both these primary functions. It is, first, inefficient as a trier of facts; second, it is totally incapable of applying the law to the facts.

Ladies and Gentlemen, in this present age of progress and enlightenment, it is difficult to imagine a more illogical way of trying facts than by a jury of men selected as they are. If your watch is out of repair, you seek the services of a jeweler; if you are sick you call in a physician; if you want a house built, you look for a carpenter. But if you have a complicated

case to be tried, involving a careful, dispassionate weighing of evidence and testimony, requiring keen observation and analytical discrimination, and a thoughtful application of the law to the facts, you are compelled to seek the services of twelve men, wholly inexperienced, unaccustomed to such exacting work, herded together like a bunch of cattle; you appeal to their emotions and prejudices, and then look to them for correct decisions!

The whole thing is illogical, impractical and prevents justice. As far back as 1883, Lesser, that eminent historian and scholar of jurisprudence, stated that a jury trial is not at all a good method of determining facts. In the words of Charles Knott, jr., head of the Court of General Sessions, of New York City, "In my opinion the weak spot in our administration of the criminal law lies not so much in our police forces and our prosecutors as in our juries."

Hear the statement of an eminent authority contrary to the opinions of the gentlemen of the opposition.

We have shown, Ladies and Gentlemen, that the jury is totally incapable of trying facts. How much less qualified is it then to apply the law to the facts, the law which is so complicated and so complex.

Let me quote to you from an excerpt which was given to me by Chief Justice Carrington T. Marshall, as an average instruction given to a jury by a judge:

"The court instructs the jury that if you find from the evidence that defendant's roadbed and approach at the point where the plaintiff was injured, if you find that he was injured at all, was not on such date commonly, usually and customarily, used by the public as a footpath, or if you find that it was not so used with the knowledge and consent or acquiescence or permission of the defendant, but you find from the evidence that the plaintiff on the night and at the time in question had become drunk or partially drunk from the voluntary use of intoxicating liquor, and when struck by the engine, was lying down asleep on defendant's track, then you should find for the defendant."

Evidently the Judge understands these instructions; otherwise he would not be giving them to the jury. But the jury has neither the training, the background, nor the capacity to apply these complicated laws to the facts.

No better example can be given of the inability of juries to apply the law to the facts and the average low intelligence of

the jury than the example suggested to us by the gentleman on the Negative, the recent Sinclair-Doheny trial. After the acquittal of Harry Sinclair by the jury in Washington a few years ago, a correspondent of the *New York World* interviewed some of the jurors who had set Sinclair free. It is amazing to observe the absolute ignorance of the jury regarding the fundamental facts of the case. Several of them expressed amazement when told the United States Supreme Court had set aside the lease of Teapot Dome on the ground that it had been corruptly obtained. Two others said that they expected the Judge to tell them whether he thought Sinclair was guilty or innocent. One said that he was wholly impressed by the statement that the oil was of no use to the United States while it was in the ground.

This is not a laughing matter. It is a question which involves the very sanctity of the American Government. Such stupid expressions from jurymen in one of the most important criminal cases in recent history tend to make the thoughtful person very pessimistic as regards the value of jury trials.

One may rightfully inquire, is not the verdict of the jury merely the wisdom of collective ignorance? And yet this Sinclair trial took place in the city of Washington, the Capital of the Nation, where the illiteracy ratio is small and where the people are supposed to stand near the top of knowledge.

And again, in the words of Judge Knott, "Because of the inefficiency of the jury system, the United States is considered the safest place on earth in which to commit murder."

I repeat. "Because of the inefficiency of the jury system, the United States is considered the safest place on earth in which to commit murder."

Now what happens at each murder trial? The defendant's attorneys draw a pathetic picture of a disrupted home, and inquire whether such a model husband and father, who was guilty only of a deplorable lack of judgment in robbing a bank, should be sent to Sing Sing with murderers and thieves? And, of course, invariably the jury acquits.

And as Professor Sunderland, Professor of Law at a leading law school, states, "The lawyer wants jurors having prejudices which he can play upon, emotions and sympathies which he can appeal to and capitalize for his own profit."

SECOND NEGATIVE

L. R. Sutin, Illinois

Ladies and Gentlemen: The opposition has entirely ignored the speech which was presented by our first negative speaker, and, immediately following that, presented a severe denunciation of the jury as it exists today.

We do not contend, Ladies and Gentlemen, that in all cases the jury is the most efficient body that we can possibly find. What has the opposition pointed out? That in one trial in the United States, the Sinclair-Doheny trial, an exception to the general rule, a jury was found ignorant. But did he notice, Ladies and Gentlemen, or did he even combat the fact that under our proposed reforms, such men would not even reach the jury? Did he forget that we have a commission to classify jurors, to pick only the good men? Did he forget we have booklets now in use in certain of the states in the western part of the country to instruct the jury as to what they are to do? Did he forget that we are going to reduce peremptory challenges? They completely forgot the fact that in this debate we have presented reforms to take care of these one or two isolated cases which they have presented.

Then they stated that the jury is controlled by pathos. Ladies and Gentlemen, do they mean to say that the judge is not a human being? What are they doing? Merely transferring the pathos of the jury to that of the judge.

We had the good fortune this morning to appear at the Supreme Court and listen to the arguments there presented. And, Ladies and Gentlemen, we wish you could have been there, to hear some of those lawyers plead before the Supreme Court. They used just as much pathos, just as much passion, as they would have used before a jury.

Furthermore, they have quoted one opinion, in which they say all the trouble in the United States today is due to the jury system, in spite of the fact that we presented to you a report from the Illinois Crime Commission to the effect that only 2 per cent of all the cases in Illinois within the last ten years were brought before a jury. In spite of that evidence, they bring to you one opinion of one certain gentleman.

We contend, Ladies and Gentlemen, that this Commission has produced evidence of conditions which are prevailing in the United States. If Raymond Moley, of Columbia University, who has considered over 200,000 cases upon every crime commission in the United States, has stated that that is a prevailing condition in the United States, it is evident therefore that perhaps our jury is not the cause of so much of this great crime wave as the opposition was attempting to place upon it this evening.

We should like to make clear the distinction between equity courts and common law courts for the benefit of the opposition. Evidently they did not understand the first speaker. The difference between an equity court and a law court is simply this, that in an equity court there are very, very few questions of fact which are tried before the judge. The judge merely makes constructions upon written instruments, facts which are already conceded in the case. He merely construes the law on that particular case.

Then again, the judge has to determine questions of fact in our injunction suits and, Ladies and Gentlemen, if any of you have ever been in the mines of Pennsylvania and West Virginia, you can see that those conditions there are the result of the abuse of injunctions which our judges have been guilty of, and the people in West Virginia and Pennsylvania have lost all confidence in our judiciary of today.

They have stated that 90 per cent of the cases in Baltimore, Maryland are tried before a judge. It is very fortunate that we were able to read a great many of those cases, and, fortunately, Ladies and Gentlemen, a great many of them were cases in which the criminal had pleaded guilty. So as a matter of fact, a great many of those cases were not tried before a judge.

Thus far the opposition has entirely ignored the reforms which we have presented. We have shown that the jury system is responsible only for a negligible part of the breakdown of the judicial system, and that its defects can be remedied.

In continuing the arguments for the Negative, I shall show that the jury system is basically the best plan yet devised to guarantee the rights of the people. The opposition contend that they cannot try facts. But we maintain the jury is better qualified than the judge to determine questions of fact. In the first place, it is not hampered by legal concepts and training. The facts to be found in our courts are generally the facts of

common life. They do not require so much legal training as common sense and a knowledge of human nature as found in men and not in books.

James Dilks, in the *St. John Law Review* of December 28th, calls our attention to the fact that the lawyer's unbiased judgment of the truth of the facts would be warped by maxims and data, common law and statutes, and the result therefore would be that the decisions of our judges would be hair-splitting and over-refined distinction between questions of fact, as their minds have been schooled to do so with the law.

Now in the second place, the judge is not an Oracle of Delphi, acquainted with all of the knowledge in existence. Varying cases demand varying types of knowledge. The judge cannot be an expert in accounting, oil and gas, marketing, insurance and what not. In Wheeland versus Atwood, a Pennsylvania case, the question of how much a debtor could be insured for was before the court, and these justices, admittedly unfamiliar with the facts, laid down a rule. That rule is in existence in Pennsylvania, and that rule has been condemned by all men acquainted with the insurance business. In Edwards versus Robinson, a federal judge in 1923 laid down the wrong rule as to minerals in property—. If we but had the facilities and the state reports here, we could point out to you hundreds of similar cases.

Professor Leon Green, writing in the *American Bar Journal* in December, 1927, adequately sums this up when he says that "the judge's general charge to the jury is the greatest single source of reversible error, and both trial and appellate courts would be relieved of their greatest annoyance if this general charge could be eliminated from trial procedure."

If this liability to err is so great in the realm of law, in which the judge is supposed to be so well trained, how much more so will it be in trying questions of fact, where vast experience alone in the various walks of life can qualify a man to judge. The jury then is better qualified than the judge to determine questions of fact.

Now, in the second place, we maintain that the jury rarely errs in its decisions. We submit this proposition because eminent jurists, the very men whom the opposition would place in control of the entire trial have testified to this conclusion.

Former Justice Mahoney, of the New York Bench, in a farewell address said that, "the jury system is the basis of and productive of the fairest and most reasonable results in adjudicating disputes between fellow citizens."

This Sinclair-Doheny trial presentation by the opposition is only an exception to the general rule. The question resolves itself into this: "Shall we discard all of the justice which has been dealt in thousands of cases merely because the facts have been incorrectly decided in one case?"

We do not maintain that the jury is infallible in its decisions. But neither can the opposition maintain that the judge is going to be invariably in his. For every Sinclair-Doheny trial presented, we can bring thousands of cases from every state in the Union, showing thousands of conclusions reached on the basis of pure justice.

Let me refer you to many of the recent cases: The Hickman case, the Sacco-Vanzetti case, the Northcott murder, Charlie Birger in New York; the Robbins embezzlement case in New York where the jury convicted in spite of the testimony of ten of America's greatest psychiatrists, who testified that the man was insane. After he had been convicted by the jury, Robbins threw off his sham and confessed he was fooling all of the time.

The Leopold-Loeb case was tried before a judge. How many of you ever read the plea of Clarence Darrow before that judge, one of the most human, emotional appeals ever made? And those boys were given a life sentence, which, under the statutes of the State of Illinois, will mean that they may be paroled in twenty years. We have statistics from Judge Kavanaugh's office which show that from September 1st, 1925 to September 1st, 1926, of a hundred cases presented in his court, with the exception of three, he believed the same as the jury, and upon one of these he is now doubtful.

So, Ladies and Gentlemen, we can readily see that some of these wild and radical statements made by the opposition concerning only a few cases of mistrial by a jury do not tear down the tradition of the guarantee of the peoples' rights as built up by the jury.

Finally, Ladies and Gentlemen, the jury rarely errs in its decision, and these few faulty verdicts handed down are not wholly due to the jury. In the criminal procedure we find

that constitutional rules and procedure are balking justice. For instance, a man, though implicated in a felony, need not testify. This was shown in the last Sinclair trial, where valuable testimony was not available because of the right to refuse to testify.

Again, a man cannot be placed in jeopardy twice, so that when the state loses the case, there is no appeal, but when the criminal loses the case, he has a great many chances for reversal in the upper court.

As A. G. Burr, Associate Judge of the North Dakota Supreme Court said, "Laymen believe this system is devised to aid criminals to escape."

It is these defects apart from the jury system which we object to having the opposition put upon our jury system and condemn it for that reason.

In conclusion, we have pointed out that the jury system is not responsible for the great amount of breakdown in our judicial system today, and that the reforms which we have presented will take care of the defects which exist, such as the commission to pick jurors, the reducing of peremptory challenges, the use of a booklet for the purposes of instruction, the limitation of examination of veniremen—all of those will take care of that situation.

Finally, I have shown that the jury system is basically the best system yet devised to guarantee the rights of the people.

THIRD AFFIRMATIVE

William Zeiter, Ohio State

First of all, Ladies and Gentlemen, let me dispose of the questions put by the negative speakers. They ask whether we are in favor of abolishing the grand jury, the coroner's jury and the petit jury. The questions is answered in the proposition as we have it stated this evening. The proposition is that the jury system shall be abolished in the United States. That question is answered in the very statement of the proposition.

They ask further whether we will give a detailed plan of the judge system. We answer no, we will not. That is not the concern of the debate tonight. We are arguing a principle. We are arguing the substitution of a judge or board

of judges for the jury, not the working out of the details of the plan; and they cannot hold us to give them details when they are not concerned with the question.

They ask further whether the judge is going to function in common law cases as he does in equity cases. Obviously enough, the judge is going to function in common law cases just as he does in equity cases.

We can show you that the judge is perfectly capable of functioning as he does in all other cases, in common law cases. This assertion is proved, Ladies and Gentlemen, by the waivers which were cited by our second speaker. He showed that in Connecticut 70 per cent of all criminal trials are held without jury; in Maryland, 90 per cent; and 75 per cent in Baltimore. In our own city of Columbus, Mr. Beaver, the assignment commissioner, tells us that from one hundred to one hundred and fifty cases are filed daily, and that out of all of these cases, only once or twice in two weeks, and oftentimes not for a month, is a demand for trial by jury made. In the Municipal Court of the City of New York 95 per cent of the cases are tried without a jury. There we have the judge performing those duties which the Negative asks whether we would have him perform or not.

That disposes of the negative questions. We still maintain that the Negative has not given us a satisfactory answer to the question we put to them. We asked them for the distinction between common law cases and all other types of cases.

They would answer that the distinction exists in that cases in equity are not concerned with facts. Ladies and Gentlemen, where are facts more important than in a divorce case? Is there any case where a jury would be more essential than in a divorce case? And yet the Negative are willing to see divorce cases tried without a jury, by the system of a judge or board of judges, which we propose. Isn't this an inconsistency in their plan?

We maintain that the question which we put to them is not satisfactorily answered, and this is not merely the opinion of the Affirmative.

Let me quote to you from Walter H. Taylor, a member of the Virginia Bar Association. "There is no reason why the jury should determine facts in common law cases and the judge should determine facts in all other cases." There is the answer.

There is no distinction between common law cases and all other types of cases. And consequently, the stand of the Negative is one of inconsistency with the facts as we have them in our judiciary today.

The first negative speaker proposed the reforms for the jury system, in particular a reform which would better the personnel of the jury, thereby admitting that there is a defect in the personnel of our juries.

The second speaker attempted to tell you that the jury system was the best way to determine facts. One speaker admits an inefficiency in the jury system, and the other says that the system is ideal. Is that not inconsistent? Furthermore, we maintain that those reforms which they advocate cannot be applied practically. To improve the personnel of the jury, they must lower exemptions. By doing so, and calling in professional men, doctors and instructors in schools, they are calling in men whose time is more valuable to them outside of jury service. They make it compulsory. Consequently they will serve compulsorily, and justice will not be obtained. They serve as a matter of not being excused, not because they are devoted to their duty.

The Affirmative has established its case for you in the following manner. Our first speaker showed you that the jury system lacks the justification that brought it into existence. The Negative said that we need the jury today, that the need is as great as ever. They gave you no reason. They did not analyze their assertion and tell you that there is a new justification and cite it to you. Therefore we maintain that the old justification for the jury has been eliminated and there is no new justification for it.

Our first speaker showed you further that there is a definite tendency toward eliminating the jury in our own country and even at the present day.

Our second speaker carried on the argument by showing you that the jury has proved itself to be grossly inefficient both in trying the facts and in applying the law to the facts.

We have made it clear to you, Ladies and Gentlemen, that the jury, in the first place, is not a sacred or divine institution, but is simply an aged relic. And that the system presented here tonight is not an innovation or something new. The system of a judge, or board of judges, is functioning today in

each and every case except in those common law cases where the jury is still retained.

In reality what the Affirmative presents tonight is the extension of this system of a judge, or board of judges, to common law cases, replacing the jury.

As third speaker, it is my purpose to prove to you that the logical solution to the problem is the extension of the judge, or board of judges, to common law cases. This is true for three reasons.

First, the system of a judge, or board of judges, is in close harmony with the modern trend toward efficiency.

Second, the system of a judge or board of judges brings into action the competence and efficiency which the jury never knew.

And, third, the system of a judge or board of judges establishes a direct responsibility between the people in control of the government and their instruments of justice.

My first contention, that the system of a judge or board of judges harmonizes closely with the modern trend toward efficiency, is proved to you, Ladies and Gentlemen, from within our judiciary today as well as from without. The very fact that today judges are determining the facts and applying the law and rendering decisions in all cases excepting that small number of common law cases which is tried by a jury, proves my issue. If it were not a satisfactory, a worth while, institution, it would not be functioning so extensively today.

Now, let us look for a moment into other professions. Medicine has been taken from the sham and quack doctors and placed in the hands of men reliably and carefully trained to handle it. Our lawyers are no longer the village grocery clerks, who studied law while customers did not disturb them. The requirements for instructing in elementary and high schools have been raised. So we might continue without end, showing how the requirements of each and every trade and profession are being raised, showing that we are no longer content with the old standby, but demand efficiency. We see, Ladies and Gentlemen, that this principle of efficiency is applied in each and every trade and profession and in all cases at law except this small percentage of common law cases. In common law cases today, and in common law cases only, we are compelled to seek the services of that jury which we have proved to you to be grossly inefficient.

In the light of that contention, Ladies and Gentlemen, it is only logical that the system of a judge or a board of judges be extended to common law cases.

The second reason why a system of a judge, or board of judges, should replace the jury at common law is that the system of a judge or board of judges brings into action competence and efficiency, which the jury never knew.

It is almost needless to rehearse before you the fact that our judges are men of college training and have years of experience, that they are men of natural ability and talent, which is proved by the fact that they have been successful in their field.

Our second speaker proved to you the inefficiency and incompetence of the jury. In contrast to this, Ladies and Gentlemen, the experience of our judges has wrought in them the ability to distinguish between sheer emotional appeal and actual facts. Consequently their decision is not so easily swayed by feminine attractiveness or by the eloquence of a lawyer.

Professor Barnes, the historian, in advocating the abolition of the jury and replacing it with men of training and experience, tells us that before such a group the vaporings of a high-priced counsel would have about as much standing as the pulpit gymnastics of Billy Sunday.

Walter H. Taylor, quoted before in this argument, a member of the Virginia Bar Association, says: "Our judges are men of affairs, men of practical sense, and men in no way removed from the common people. With trained minds, filling their responsibility to the people, their prestige and reputation involved, they can be counted upon to determine the credibility of witnesses and the relative weight and importance of evidence much better than the average juror, who, with no experience in analyzing or weighing testimony, is called upon probably for the first time to act as arbitrator, and not only to determine facts, but to apply to these facts the law given to him by the court in a mass of intricate instructions.

Obviously enough, if we have the competent at our disposal, there is no reason for contenting ourselves with the inefficient.

Thus far I have given you two reasons for retaining the system of a judge, or board of judges; first, that the system of a judge, or board of judges, is in close harmony with the modern trend toward efficiency; and, second, the system of a judge, or

board of judges, brings into action the competence and efficiency which the jury never knew.

My third reason for the extension of a system of a judge, or board of judges, is that it establishes a direct responsibility between the people and their instruments of justice.

Our juries, Ladies and Gentlemen, answer to no one for their decisions. In contrast to this, our judges, whose term of office would depend upon actual service, are bound to make their decisions in the light of justice. At every election the personality and word of our judges are rehearsed before the populace either to embarrass them or to perpetuate their administration. There is no reason for withholding that direct responsibility between the people and their instruments of justice.

It is only logical in the light of these arguments that the system of a judge or board of judges should be extended to all cases.

Permit me to summarize briefly for you our stand.

Our first speaker made it clear to you that the jury system lacks justification today because the justifications which existed in the days of its origin have long been eliminated. He pointed out to you a definite trend or tendency toward elimination of the jury today. And finally he told you that the jury system is not a sacred or divine institution, and showed you clearly that the system of a judge, or board of judges, which we, the Affirmative, advocate, is functioning satisfactorily today in each and every case excepting a small percentage of common law cases.

We are, in turn, advocating the extension of that system to common law cases.

Our second speaker continued the arguments by showing you the gross inefficiency of the jury both in trying the facts and applying to the facts the law.

And I have given you three reasons why the logical solution to the problem is the extension of the system of a judge, or board of judges, to common law cases.

THIRD NEGATIVE

A. J. Casner, Illinois

LADIES AND GENTLEMEN: The last speaker has talked of the connection that there will be between the people and the court

if we adopt the system of a judge, or board of judges. That is one of the main reasons why we contend it should not be adopted, because he will naturally guide his decisions so as to meet with public approval and public opinion. And how is public opinion expressed? It is expressed through the newspapers. And is there anyone here tonight that will contend that the newspapers express the truth?

He has talked of the efficiency that we will have under our judge system, and how the adoption of the system will be a trend towards efficiency. But I want to ask him, if they adopt the judge system, how are they going to do away with the delays due to arguments before judges, because in the courts, if you have ever attended courts and listened to an argument on a demurrer or an argument on a motion or an argument before the court when the jury has been waived, you will find it consumes just as much time and that just as much appeal to the emotions is employed as in arguments before a jury.

What are they going to do about the taking of cases under advisement? Why, the Congress of the United States found it necessary to pass a law prohibiting judges from taking cases under advisement for longer than five months at a time.

What are they going to do about the errors that judges make, as a second speaker pointed out, errors of law? If they err in law, won't they err in fact?

About the delay in deciding questions of fact, Judge Miller of the Supreme Court of the United States, tells us that judges readily agree on questions of law, but often disagree on questions of fact.

What are they going to do about the delay due to catering to public opinion, waiting for an expression of public opinion, so that they may decide it to meet with public approval and then be re-elected at the next election?

What are they going to do about expense? They increase the work. They are going to have to give them more money and they are going to have to have more men upon the bench.

Tonight they are arguing for the abolition of an institution that has existed for eight hundred years, and they have not told you one thing they are going to put in its place.

They talked about the fact that men would be reluctant to serve on the juries. Again they have disregarded the reform which we propose, whereby men would be asked, "When do you

want to serve on the jury? You can serve at your convenience." And when men are given some consideration, they will not be reluctant to serve on the jury.

I want to go back into their second speech for just one point, and that is that he says that the jury errs in applying the law to the facts. I wonder if they ever heard of the special verdict, where all the jury does is to bring in a finding of fact? It does not do anything about the law. And the special verdict can be had at the option of the parties.

Before going into my speech I want to summarize briefly our stand and just what we have done thus far in this debate.

Our first speaker pointed out to you that all of the blame heaped upon our judicial system is not due to the jury, but, in fact, only a negligible part can be traced to it. And he has proposed reforms here tonight which would place in that jury box men who would be endeavoring to enforce justice. And they have failed to meet us upon that contention.

Our second speaker has pointed out that the jury system is basically the best plan yet devised to guarantee the rights of the people. He has pointed out that the jury is better qualified to decide questions of fact than the judge, and that it rarely errs in its decision.

Now, it is my purpose in this debate to prove that the right of trial by jury is necessary, because it would be dangerous to give the judge, or board of judges, complete control.

This is true, first, because the people would not be afforded sufficient protection. Today in every criminal case the state is a party to the suit. The court is a branch of the government of the state, and consequently every officer of the court is an officer of the state. If the judge or board of judges were substituted for the jury, we would have the peculiar situation of a man not only being prosecuted by an agent of one of the parties to the suit, but the actual decision on both the law and the facts would be rendered by another agent of a party to the trial. Why, such a method of determining a man's guilt cannot lead to impartial decisions and is not consistent with our democratic principles of government.

Many eminent men have recognized the protection the jury has given to the people. Henry Jessup, of the New York Bar, in an article in the *American Bar Association Journal* makes this statement:

"Federal judges are not always fair. They are appointed by the government, and from the beginning of the trial to the end, they are for the government. Why, many of them believe it can do no wrong. The government is the source of their income. Naturally they are not going to decide against it."

The Honorable Charles S. May, in a speech before the University of Michigan Law School, makes this statement:

"The right of trial by jury, a great popular right, a right belonging to the whole people, should never be abandoned, because it is needed in the state to guard against any acts of tyranny or oppression on the part of the government. It has been to many English patriots the open door of escape from the blood thirsty minions of a tyrannical king. And in this state it is preeminently a tribunal of the people, and as such is a refuge for the people when anything would tend to oppression on the part of the government."

Edward Watkins tells us another reason why it would be dangerous to follow their suggested plan.

"It has been my observation over a period of over thirty years in the practice of law that judges in criminal courts, because of their constant observation of criminals become hardened and are inclined to a fixed belief in the general guilt of all who are charged with crime."

Therefore, Ladies and Gentlemen, since the jury, which is made a matter of absolute necessity in criminal cases by the constitutions of most of the states of the United States of America, and in the Federal Constitution of the United States, since it was deemed necessary and is necessary to prevent any acts of oppression on the part of the government and since it leads to more exact decisions, we of the Negative contend that it is necessary.

And now, second, it would be dangerous to give the judge, or board of judges, complete control, because of the political influence that would be exercised over them. If the jury is abolished it means the turning over of the entire judicial trial to a judge or board of judges. If that is done, it opens the door of the judiciary to that individual who heretofore rarely had an opportunity to prey upon that branch of our government to any appreciable degree. I refer to the political boss.

I think that we can safely say that the great majority of our judges today are stalwart, upright and honest men. But

how long would such type of men be judges if the judge was given complete control of the trial?

I think the answer is the same as it has practically always been, that when a man refuses to obey the dictates of the political boss that has placed him in office, he will be removed. This will naturally lead to men being placed in the judicial chair who can be controlled from the outside.

The fact of political control is especially true under our system of electing judges. Today, where the judge does not have complete control, successful attempts have been made to exercise control over him.

Years ago Joseph Daley was defeated for re-election in New York because he refused to appoint as clerk a man proposed by Tammany Hall. Richard Croker said Justice Daley had been elected by Tammany Hall, and Tammany Hall had a right to special consideration at his hands, and, therefore, when Justice Daley did not respond, he was defeated for re-election, and a man placed in office who would obey.

Right here in your state a report of the Cleveland Bar Association says that $60,000.00 was spent in Cuyahoga County, where the city of Cleveland is located, for the campaign funds of certain judges. And that amount of money could not have been given without the creation of many obligations on the part of the men who were elected.

Ladies and Gentlemen, the right of trial by jury has prevented this attempted control of the judge from having any appreciable effect. And if it should be removed, there would be nothing to prevent this outside control from stepping in and directing the whole trial.

Now the Affirmative is supposedly proposing a reform tonight. But, as John Randolph once said in Congress, change is not reform, and destruction is not reform. We must be careful what we do in abolishing one of our judicial institutions. To abolish the jury, sweep it out of use and out of existence with one blow would be terribly destructive, and a radical measure, a direct impeachment of the wisdom of the past, and a hazardous experiment upon the future.

We of the Negative do not contend that jury trial is an infallible mode of ascertaining the truth. Like everything human it has its imperfections. But we do contend it is the surest mode of punishing the guilty and the best method of protecting

innocence ever devised. And we have shown in the course of this debate that the jury is to blame for only a negligible amount of the defects of our judicial system, and by reform the defects can be removed, and that the jury is basically the best method of safe-guarding the rights of the people, that it is better able to judge of the facts, and that it seldom errs in its decision, and that the right of trial by jury is necessary to protect the suspected criminal and to prevent political influence in the judiciary.

For those reasons, we contend that the jury is a necessary part of our judicial system.

FIRST NEGATIVE REBUTTAL

Albert Hallett, Illinois

Ladies and Gentlemen: In commencing this debate we asked our opponents several questions. The first one we asked was about the coroner's jury. They have entirely failed to answer it. We wish to point out that that question was very relevant, because the coroner's jury decides questions of fact and is composed of the same type of men as are used on the petit jury, in fact, it is far more relevant than our opponent's argument in regard to equity and other courts of that type.

Now may we point out that we have shown you concretely and specifically how we will improve the jury, and our opponents have utterly failed to show anything about their system?

My Friends, before we abolish an institution which has been established in this country and England for eight hundred years, should we not know more of the substitute they propose? Our opponents must show us how this plan will work.

Now that they have finished their constructive arguments suppose we analyze the case. Their first speaker told us that we could use the judge in law as well as equity. We will point out first that equity is essentially different from law, and that the emphasis in a court of equity is upon the construction of written instruments and things of that type, and not upon facts, and that the judge has a right to call a jury to decide a question of fact, should one arise. Therein lies one of the differences.

The other difference is the punishment. In criminal cases, a man loses his life, his money or his right to freedom, while in

the equity case, he is enjoined from doing something. There, My Friends, is another vital difference.

We asked them whether the judge would function the same as he does in equity. My Friends, in Minnesota, right today the equity courts are eighteen months behind schedule. Is that the speed we want in our judicial system?

Furthermore Chief Justice Taft of the United States Supreme Court says that judges frequently take a very unreasonable length of time in writing their decisions, and in this way they seriously hamper the administration of justice.

In equity suits, injunctions are granted, and Mr. Hoover and others are going to investigate this function of the court, because of the situation in the states of Pennsylvania and West Virginia.

They have pointed out that the jurors are poor in quality and that they lack knowledge. They insist upon ignoring our plan. We have shown that with the use of commissions to classify jurors, with the use of preferences as to time of service, with the reduction of exemptions and with the use of booklets, we should have a higher type of juror.

The rest of that speech was supposed to show that the need for the jury was gone. We maintain this evening that, although the need is different, it is still here, because of the control of politics. He says the judges will be elected. May I quote from a distinguished writer in the *Central Journal*?

"One judge will dispatch the business of the court with independence and a regard of right and wrong. The other will cater, take under advisement, listen to public opinion, and in the election which follows, he who listens to public opinion will be elected. He is a politician, not a lawyer."

Corporations have a very serious control of judges when elected. Judge Gill says when he started the practice of law, the people in his office gave him a list of nineteen out of twenty-two judges before whom he would practice, and they said, "Get the case in front of those men, because they always decide for us." That is one of the dangers of the judge system.

Another danger is that they frequently bow to corporations in other ways. For example, in Indiana, in the past few years, many judges have gotten very profitable jobs in the railroad business after being on the bench.

He has said that legal knowledge is needed in determining facts. He does not believe the jury is capable. My Friends,

Chief Justice Kent, for twenty years on the New York bench, says. "A knowledge of law is not needed to determine facts; all that is needed is a knowledge of human experience and plain common sense."

Honorable Charles S. May, before the Michigan Law School, tells us that often the very learning and discipline of the judge have unfitted him for this work by educating him away from the people, for facts cannot be dealt with like principles of law or arbitrary scientific rules.

For that reason we maintain that the judge is not a capable man to decide the facts.

FIRST AFFIRMATIVE REBUTTAL

Clayton H. Schug, Ohio State

Ladies and Gentlemen: The Negative as yet have failed to show any distinction between cases of admirality, equity, bankruptcy, probate, divorce and cases at common law. The men of the Negative say that in civil cases a man is being deprived of some money. Is this same thing not true in a case of bankruptcy? What else is a man being deprived of? Likewise, they have failed to show a distinction in cases of divorce as our third speaker has pointed out. What is more vital to the ordinary, common man than his family and the custody of his children? Our domestic affairs are tried before a judge without a jury, and no complaint is heard. As yet, no distinction is pointed out to us by the Negative between these various types of cases.

Permit me again to refer to the statement of Walter H. Taylor in a report made to the Virginia State Bar Association in 1911. "No reason can be advanced why juries should determine the facts in common law cases and the judge should determine the facts in all other cases."

The Negative say that the jury has existed for eight hundred years, and that we have not offered them a substitute. Ladies and Gentlemen, just because an institution has existed for eight hundred years is no reason that it should exist today. It is all the more reason that its justifications have been eliminated; and we have pointed out to you that its justifications no longer exist, for the jury is no longer necessary as a

political protection or as a protection against the judiciary. Our judges are elected directly by the people and responsible to them. The Negative has failed to point out a single new justification for the existence of the jury system.

I quote Walter H. Taylor again: "The jury's beautiful adaptation to conditions long since past and never to return is the source of all its present inaptitudes and absurdities."

The men of the Negative have also said that the judge, like the jury, has human feelings and the faults of human nature. But, Ladies and Gentlemen, let me refer to Walter H. Taylor again, who says, "A judge, though not unfeeling, is trained to disregard his feelings and, as a result of experience, is more able to do so than the jury."

The Negative has further pointed out the fact that the trouble with our juries is not inherent. But, Ladies and Gentlemen, let me quote the same man whom the Negative quoted, William Howard Taft, the Chief Justice of the United States Supreme Court, who says:

"The evil conditions which taint our judicial procedure are not due to our prosecutions or to our law enforcement, but are a result of the general incapacity of the jury."

The Negative has also said that the judge is not efficient in finding facts. But we wish to remind the Negative that the judge has decided questions of fact in the past, as we have pointed out, in all of these cases of admirality, equity, bankruptcy, probate and divorce. He has done so without any objections by the people. It is only folly to think that the judge is not able to find facts in common law cases. As a matter of fact, the judge is capable of finding facts in common law cases, first, because of his many years experience in finding facts, and, second, because the judge, like the jury, not only possesses common sense, but he possesses more than common sense, much more than common sense; he has training and experience which makes him skilled as a finder of facts as compared with the unskilled jury.

The gentlemen of the Negative have said, however, that a system of judges would slow up procedure. But, Ladies and Gentlemen, let us cite you an ideal situation where the judge system which we advocate tonight is in effect. "In England, where the judge or jury was at the choice of the litigant, of over five million judgments rendered in 1911, less than 5

per cent were in cases before juries. There are but thirty-two judges besides the Lord Chancellor above the county court judges in England and Wales, deciding the affairs of forty million people and the appeals of the Kingdom, and doing so with almost no delay."

That is a quotation from William H. Blymer, a member of the New York State Bar.

Thus the system which we propose has already proved itself efficient and satisfactory. In all cases where our system of judges is operating today, we hear no objections; we find no objections by the people; the people are upholding it; they are demanding trial by judge.

SECOND NEGATIVE REBUTTAL

L. R. Sutin, Illinois

Mr. Chairman, Ladies and Gentlemen: The opposition has made much of the fact that there is a right of waiver of trial by jury in our courts today. But what does that prove, Ladies and Gentlemen? It proves nothing at all. It merely shows that the people of the United States today still have the right to trial by jury. That is what we are contending for in this debate, the giving to the people of the United States of the right to trial by jury if they demand it.

Then they have stated that the people of the United States are clamoring for and demanding trial by judge. What an exaggerated statement!

In the Massachusetts quarterly for February of this year, there is a statistical report of the number of cases for the last five years tried in Massachusetts and, Ladies and Gentlemen, in the five years there was an increase of 10,801 cases of trial by jury, and an increase of 235 cases for jury waived. Does that show that the people of the United States are demanding, are clamoring for, trial by judge?

Furthermore, Ladies and Gentlemen, they have still failed to present to us a plan. They state it is unnecessary. But how are they going to do away with a great deal of the evil existing in the judge system if they present no plan?

We have shown you that judges take cases under advisement for as long as five months, that they keep them under

advisement for such a long time as to amount to a very serious denial of the administration of justice. How are we going to do away with that, when in our common law system the verdict must be handed down immediately? It cannot be taken under advisement.

Are they going to have one judge, five judges or twelve judges? Are they going to have a twelve judge board? We should like to have an answer on a few of those points because they are essential to this debate. Furthermore we have asked them whether they would like to abolish the coroner's jury and the grand jury. They failed to answer that question, for this reason, that they know that the coroner's jury and the grand jury decide questions of fact, and that they are typical of the men that appear upon our petit juries today. And they cannot deny that those men are functioning properly and that they have been functioning properly there. If they function properly there, they can function properly in petit juries.

Furthermore the opposition have made much of the English system which exists today. But, Ladies and Gentlemen, the political situation in the United States does not exist in England. Did they say one thing about the political conditions which exist in the United States today? We pointed out that our judges are influenced politically, and they did not say a word.

But permit me to quote from a writer in the *Indiana State Bar Journal,* in which he states that the judge's habitual and constant exercise of his job tends to unfit him for its discharge and these men in these offices are under political influence. Ladies and Gentlemen, judges themselves believe they are under political influence. The opposition has made that argument.

Furthermore, we have pointed out that the judge's general charge to the jury is the greatest single source of reversible error. Have the opposition told you how they are going to do away with this misconception of the law by the judge?

They say that the judge has much intelligence and great legal training. And that is just exactly the reason why the judge cannot determine questions of fact as well as can the jury, as I pointed out to you before.

Furthermore I should like to quote from Mr. Rollo in the *North Dakota Law Bulletin,* when he says, "It is seriously doubted whether the great majority of actively practicing

attorneys who try cases before the judges and the juries will admit that the jury makes any greater number of mistakes than the judge."

Furthermore, in this debate the opposition have entirely ignored our reforms with the exception of one, and that was exemptions. And, Ladies and Gentlemen, we have shown you that the jury man will have the right to appear for jury service when he sees fit. That is essential in this debate. They cannot contend that the jury is inefficient unless they show us our reforms will not work and are not practical. Our system is the one in use in the Federal courts today, and it is working very successfully.

Furthermore we have pointed out that the cases of the opposition are only exceptions to the rule; we have pointed out that we can bring cases from every state in the Union showing thousands of cases of pure justice. There are only a few cases in which the jury has not functioned properly.

Then they say our judges will be efficient. Perhaps it was very unique last week that Superior Justice Hardy, of the California Courts, was ousted from the American Bar Association, because he accepted $2,500.00 for legal services, contrary to the Constitution. Our judges are as easily bribed and are more inefficient that the opposition say our juries are.

SECOND AFFIRMATIVE REBUTTAL

Harry Dworkin, Ohio State

Ladies and Gentlemen: The Negative argue that our proposed system of judges would be responsible to political parties. Now, political parties are composed of "we, the people." As a result the judges are responsible to the people and elected by the people. But a jury owes its responsibility to no one. They are chosen without any regard as to their democractic sentiments.

The Negative have asked us a question as to whether we intend to abolish juries in cases involving coroner investigations. The statement of the proposition answers that question adequately. We are defending the proposition that in all trials throughout the United States the judge, or board of judges, should be substituted for the jury.

They have asked us how many judges we are going to have in our proposed system. Numbers are insignificant. We might have two or three. That is not the proposition for debate. Moreover they seem to be a little inconsistent, for though they point out several evils existing in judges and point out the inefficiency of judges, yet, at the same time, Ladies and Gentlemen, they have repeatedly quoted here these much maligned judges as good authority for their contentions.

The Negative argue that the jury is necessary as a safeguard for the people's liberties. Let me quote to you Albert Stickney in the *Century Magazine*: "In England, where the jury system grew, there was no doubt in times gone by great dangers and evils to the people from political tyranny."

The jury system in its beginning was a political protection. But we ask the gentlemen of the opposition, is not a judge elected by the people and responsible to the people as democratic as any system of jury?

The Negative has argued in abstract terms. They talk about freedom of speech. What has that to do with this debate? They mention democracy. But do they show any relation between that and the question for discussion here? They wave our American flag before us. They play upon our patriotic sentiments. Yet it has no relation to the proposition for debate.

As we have shown, England has practically abolished the jury system, and England, as stated by students in political science, is the most democractic country in the world, in spite of the fact that it has practically abolished trial by jury.

Moreover, Ladies and Gentlemen, the only thing which has here been repeatedly advocated is to put men with experience in the place of men without experience in cases involving common law. If it be undemocratic to have our work done by skilled servants, popularly elected, then our system is undemocratic.

Let us not confuse the meaning of words. True democracy consists in having the people control the machinery of government, not in making a vain attempt to operate it with their own hands.

Moreover, as Albert Stickney says, it has been the American courts, in the person of the judges on the bench, not the juries in the box, who have been the safeguards of our liberties. Time and again, when passion and feeling rose high in the

legislative and executive departments, it was the judges who have saved the rights of the people. The rights of the people have always been safe in the hands of the judiciary.

Charles Evans Hughes says in a recent Bar Association speech that our hope for perfection in the administration of justice lies not with juries but with conscientious judges in control of the business of the courts.

Moreover, Ladies and Gentlemen, the jury is composed of twelve separate units, each unit comparatively unknown in society, so that there is a complete lack of responsibility. One obstinate, friendly or corrupt juror may easily bring about a verdict which did not at all represent the opinions of the twelve.

Let me quote to you from the statement of a self-confessed bank robber: "I was tried by a jury of my peers. The jury was a mixed jury of both men and women. The state's testimony was condemning. It swept my case aside. Much to the surprise of everyone who heard the trial, the jury returned a verdict of not guilty. After the trial a woman who had flirted with me from the jury box came to me and said, 'I think it is a shame, the way they have been treating you. Everyone else wanted to vote you guilty, but I just wouldn't let them.' I had been tried by a jury of my peers."

I just wouldn't let them! One woman rendered the verdict, not twelve people.

THIRD NEGATIVE REBUTTAL

A. J. Casner, Illinois

Ladies and Gentlemen: I want to start out by pointing out three questions that we have asked all the way through this debate.

First, are they in favor of abolishing the grand jury and coroner's jury as well as the petit jury? They have failed to answer this question. They have failed to show anything wrong with these juries. Yet they perform exactly the same functions as our petit jury, and they are made up exactly of the same type of people. They decide questions of fact.

We asked them for a detailed plan. Ladies and Gentlemen, they have presented nothing. They have said nothing as to what

is going to take the place of our jury. They are going to abolish it. And then we will take just what comes.

Now I want to go into their case briefly and just go through it and show you what they have contended this evening.

Their first speaker tried to tell us that there are in this country today courts which are governed by judges and which are performing the same functions as our common law courts. All through this debate we have answered this question.

They pointed out equity courts and we pointed out that in equity courts the majority of questions, practically all of them, are questions of construction of written instruments, and in our law courts today the judge construes written instruments.

Another thing. When you go into an equity court, they don't take anything away from you. They tell you to do this or not to do that, or they give you something for something. They do not take money away from you. They do not take away your liberty. They leave you your good name. But that is not what is done in a criminal court.

They have not met our constructive argument on criminal courts. They have said nothing of that point, where it is guaranteed in all of the constitutions of the states of the Union except two.

They talked of probate courts. Ladies and Gentlemen, there is not a question of fact before the probate court but it construes a will or some written instrument. When they really get a question of fact, such as a contest of will, whether or not the man is insane, what do they do? They take it over to the Circuit Court and let the jury decide it.

They talked of other courts—juvenile courts. There is seldom a question of fact that comes before the juvenile court. It is an admitted state of facts, and the judge applies the law to that admitted state of facts. They talked of incompetent people serving on the juries. Our reforms will do away with that, where commissions will be appointed to classify men, so that we will have men in the jury box who are competent to perform their duty of seeing that justice is done.

They say that the jury is no longer needed. But did they meet us squarely on our argument of political influence of the judge? They said, "We are the voters. We will control them." Would that we were the only men and women who

go to the polls. Then his argument might be sound. But they forget the people of the city who have to go just as the political boss tells them to go.

The second speaker said that the jury was incapable of deciding questions of fact, and our second speaker pointed out facts showing you they are better qualified to do that than the judge.

Victor Houston says, speaking from his experience in several hundred jury cases which he has personally tried, in which conviction has come at the hands of the jury, that it is his belief that the average American juror, when he has properly brought to his attention the seriousness of the task, is intelligent, conscientious and fair-minded, well able to understand the facts, and that corruption involving him is rare.

Their third speaker told of the connection that we would have between the judge on the bench and the people. Ladies and Gentlemen, the jury has been the connecting link between the courts and the people, and if that is taken away, in the words of Judge Black, it will turn loose on the people the powers of a malignant government through courts without the protection of juries.

He talked of efficiency. But they said nothing of delay due to arguments before judges, taking cases under advisement, errors, delay in deciding questions of fact, catering to public opinion and expense. Nothing said!

Now, Ladies and Gentlemen, we have shown that the jury is to blame for only a negligible portion of the defects of the judicial system, and our reforms will remedy them. The jury is the best judge of the facts, better qualified to decide questions of fact.

It rarely errs in its decision.

It is necessary to protect the suspected criminal and to prevent political influence.

Ladies and Gentlemen, the jury has borne the test of a longer experience and borne it better than any other institution that ever existed among men. It has been the bulwark of our liberties and the foundation of our prosperity, and we ask you to support us in maintaining it.

I thank you for your interest.

THIRD AFFIRMATIVE REBUTTAL

William Zeiter, Ohio State

Ladies and Gentlemen: The Negative still contend that their questions are unanswered. That is not true. We have answered each and every one of them and have given them an analysis of our answer. I have not the time to rehearse the analysis, but let me say that the answer to the first question was yes, the second, no, and the third, yes.

We still maintain that the question which we asked them is unanswered.

They maintain that in cases outside of common law, the matters before a judge are written contracts. Ladies and Gentlemen, why is it then that contract cases fall under civil cases and under common law? There is an inconsistency in the negative answer.

Furthermore we contend that the answer which we gave you is not the mere opinion of a college student, but it is the answer of an authority to that question.

"There is no reason why the jury should determine facts in common law cases and the judge determine the facts in all other cases."—Walter H. Taylor.

The question therefore is answered according to the authority I have just cited, and that leaves the entire negative case hanging upon an inconsistency. They are upholding the jury in common law cases and they are willing to see the system of a judge, or a board of judges, function, and function satisfactorily, in all the other cases. Obviously inconsistent.

The first negative speaker told you that the evils were not inherent in the jury system, and the second negative speaker told you that the jury system was the best plan of determining facts. Those two speeches clashed directly with our second affirmative speech. Our second affirmative speaker analyzed for you the fact that the jury system has failed in its two prime functions, first, finding facts, and then applying the law to the facts. There, Ladies and Gentlemen, are two evils inherent in the jury system, which can be remedied only by its abolition, the direct opposite of our negative apponents.

We maintain that the case of the Affirmative is established, and overthrows the speeches presented to you by the first and second negative speakers.

The last speaker for the negative contends that the judges become case hardened, and technical. Throughout their case they are ignoring the fact that today judges are functioning and functioning satisfactorily in each and every case excepting common law.

They have made the statement that we advocate change. No we are not advocating a change. We are advocating the system of a judge, or a board of judges, which is the rule in the United States today. The system of a judge or a board of judges has proved itself satisfactory, because it is functioning in so many cases. What we are advocating is not a change, not something new. We are advocating the extension of that system of a judge, or board of judges, to common law cases, replacing the jury.

Let me rehearse briefly to you our affirmative stand in the debate.

Our first speaker cited for you the fact that the jury lacks a justification today, because the conditions which may have justified it back in the days of its origin have disappeared. The Negative failed to cite a new justification for the jury system. We showed you further that there is a definite tendency toward eliminating the jury even in our own country and at the present day.

We made it clear to you that the jury is not a sacred or divine institution, but that it is an aged relic, and what we are advocating tonight is simply the extension of a system which has proved itself satisfactory, which is operating satisfactorily in so many cases, an extension of that system to common law cases.

Our second speaker proved to you that the inefficiencies of the jury system are faults inherent in the jury system, which can be removed only by its abolition. The faults are, first, the incapability of determining facts, and secondly, inefficiency in applying law to the facts. These, alone, warrant our contention that the system of a judge should be substituted for that of the jury.

And I, in my constructive speech, pointed out to you that the logical solution to the problem is the extension of this system of a judge, or board of judges, to common law cases, where we are now retaining the jury.

I gave you three reasons why this is a logical solution.

The first was that the system harmonizes with the modern trend toward efficiency.

Second, it brings into action competency which the jury system never knew.

Third, it establishes a direct relation between the people and their instruments of justice.

There is the affirmative stand, a practical solution to this practical problem.

We maintain on the evidence presented to you by the Affirmative, the logical solution to the entire problem of the evening is that in all trials throughout the United States the system of a judge, or board of judges, which has proved itself satisfactory, should be extended to common law cases, replacing the jury.

Thank you.

PROFESSOR NORTH: Professor Layton will render his decision as soon as he is able to reach a judgment in the matter.

You will find a note at the bottom of the program which says that on April 3rd Ohio State's negative team will argue the above question at Iowa, and on April 4th at Minnesota. I am very sure that we are all much interested in this development of the Big Ten Intercollegiate Debate. I think that we may look forward to some very interesting contests in this field.

I have just received this note from Professor Layton. It is the decision of the judge that the negative side upheld by Illinois has done the more effective debating.

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CHAPTER VIII

NATIONAL ADVERTISING

PRINCETON UNIVERSITY

versus

WASHINGTON AND LEE UNIVERSITY

RESOLVED: *That national advertising, as now carried on, is both socially and economically harmful.*

This is a stenographic report of the debate between an Affirmative team representing Princeton University, and a Negative team representing Washington and Lee University, which took place in Lee Chapel, Lexington, Va. on April 8, 1929. The debate was of the open-forum variety, with the decision rendered by vote of the audience, in favor of Washington and Lee University. This report and also the material for the bibliography was secured for the Annual thru the kindness of Professor Marvin G. Bauer of the Department of English, Washington and Lee University.

BRIEF

NATIONAL ADVERTISING

AFFIRMATIVE

INTRODUCTION:

A. The Affirmative is not opposed to advertising in itself.
   1. Advertising, in itself, is good.

B. It is only national advertising as it is carried on today which the Affirmative claim is socially and economically harmful.

I. National advertising, as carried on today, is causing people to devote too much time to things not worth while.

A. Our attention is being centered on such things as clothes, cars and luxuries.

B. There is too little left for the worth while things of life.

II. It has become an economic burden.

A. It virtually controls business.
   1. A man cannot stop advertising.
      a. If he did his competitor would crush him.
   2. Ultimate competition, which has been reduced in other fields by the Sherman Anti-Trust law and similar acts, has now been transferred to advertising.
      a. The big business man crushes out the small man by advertising.
         (1) His greatest victim is the man who cannot advertise his product.
   3. Its aim is no longer to inform but to beat down the customer's will.

B. It has made possible the production and purchase of products comparatively non-essential.

1. At the same time, many of us may not even have the necessities of life.
2. It has stimulated a demand for these non-essentials.
   a. Naturally being more difficult to sell, the non-essentials have received a greater amount of advertising.

C. The cost of advertising is an economic burden on society.
   1. It can only be paid by
      a. Increasing the cost of the product.
      b. Decreasing its quality, or
      c. Decreasing the wages paid to workmen.

III. National advertising as at present carried on, is undesirable for other reasons.

A. It over-emphasizes the material side of existence.
   1. Our highways are littered with advertising signs.
   2. They mar the beauty of our natural scenery.

B. It urges people to live beyond their means.
   1. It separates a man from his pocket-book rather than raising his standard of living.
   2. It encourages him to mortgage his future thru installment buying.
   3. It distracts constantly by dragging new and more enticing objects before his attention.

C. It encourages dishonesty in business.
   1. Many of the paid testimonials are open to question ethically.

D. It makes its appeal to our lowest motives.
   1. Our natural desires are greatly strengthened by its stimulation.

NEGATIVE

I. Advertising cannot be called harmful.

A. It disseminates information.
   1. It tells people thruout our nation about many manufactured products and describes their quality.
      a. It cannot be called harmful because some persons misuse it.

(1) Advertising has less to do with a man's actions than parents, schools, newspapers, movies or life itself.

(2) Most people have judgment and buy helpful and necessary products.

B. It encourages people to save.

1. To buy insurance, build their own homes, educate their children, etc.

C. It helps to raise our standards of civilization

2. By urging us to buy what may be unnecessary at the time.

II. Advertising is an indispensable necessity to our economic life and our commercial well-being.

A. It is essential to our large-scale system of production which is responsible for our prosperity.

1. The necessary markets for such production can only be attracted by national advertising.

2. Our large-scale system of production is responsible for many benefits.

a. It enables the manufacturer to give the purchaser a better product at a lower cost.

b. It enables the manufacturer to hire the best and most efficient workmen.

c. To equip his plant with the most modern machines.

d. To save money in raw materials.

B. It is the cheapest method of selling the company's product.

1. The only alternative is the method of direct approach.

a. This would be prohibitively expensive.

III. National advertising is a social benefit.

A. Our products have been improved and raised to a higher standard thru national advertising.

1. Merchandise sold by name is usually better in quality than goods of uncertain lineage.

a. Manufacturers who advertise consistently must be sure of their quality.

b. The names of well-known firms on their goods have come to mean good quality.

2. Advertisers must be honest and truthful if their products are to stand the test.
   a. Exaggeration in advertising makes no impression on the American people except to arouse their contempt.
3. National advertising brings to people things formerly beyond the reach of their imagination.
   a. The electric refrigerator is an example.
   b. The radio has brought the world to our doors.

B. Higher and better ideas of living have been brought before the American people by advertising.
1. The housewife has been relieved of much of the household drudgery.
   a. She has been given leisure for reading, study and social life.
2. It has been one of the great factors in promoting cleanliness, health and sanitation among us.
3. It has taught man how to improve his physical appearance.

NATIONAL ADVERTISING

PRINCETON UNIVERSITY

versus

WASHINGTON AND LEE UNIVERSITY

CHAIRMAN

Professor R. B. Ellard

LADIES AND GENTLEMEN: I am not sure whether this is a scheme to advertise advertising or something else. I see by the program given to me that the subject to be debated is: "Resolved: That national advertising, as now carried on, is both socially and economically harmful."

Those of us who have bought listerine and those of us who have procured a college education for $3.50, conducted by Elbert Hubbard, may feel that this is not true; while those of us who have been persuaded by the magazine that our automobile, being eighteen months old, is an altogether obsolete thing and have bought a new one for $2000, may agree.

If there are any Lithuanians in the audience, I suggest that they withdraw or do not vote, since Lithuania owes its existence as a state to advertising. When the World War was over, Poland and Russia wanted it, and Lithuania was not known and nobody cared very much what became of it except the Lithuanians, and by a very clever campaign of advertising—and a very true one—including a great many advertisements, Lithuania was heard and preserved. (I hope I am not stealing any one's argument—I have not heard this debate).

Please do not leave when I tell you that the audience plays a part here. This is a three-part debate. Usually we have two debating teams that express their opinion. This time the audience must express its opinion "before and after talking."

You have been given ballots and I shall ask you to express your opinion on this subject before the debate. You are to give the date and the place (this is Lexington, Virginia). Just

below that you are to indicate whether you are a man or a woman and after that your age. I take it that this may be answered in a very general way—say, "over six or under." Then please indicate what your opinion on the question is.

After the debate is over you will be given an opportunity to express your opinion on the question again. The idea is to change your opinion, if that can be done. There are some types of persons in the audience whose opinion I have learned by experience it is very difficult to change.

The debate will be taken down and published; so if any one wishes to change his arguments after having spoken that will be impossible.

There is a great deal of discussion as to where advertising originated. I remember a Chicago gentleman who told me he was convinced that advertising originated in caveman days when some one sketched upon a rock that he had a "rag and a bone and a hank of hair," and would some one call and take it out. But he had no luck with his campaign. We have passed through a great many evolutions since then.

One billion five hundred million dollars were spent on advertising last year. Whatever we may think about it, whatever costs one billion five hundred million dollars is a matter of concern to us all.

Washington and Lee is bound to Princeton by ties that are intimate and old. Doctor Graham, the first president of this institution was graduated from Princeton one hundred and fifty-six years ago. Light Horse Harry Lee, whose remains lie buried a few feet from here also was a Princeton man. Therefore, it is entirely probable that the influence which guided General Lee in this institution may have been partly derived from this inspiration.

So it is not entirely as strangers that we greet you but as friends coming from an institution that has long been as one with us in spirit, an institution that we have ever regarded as our spiritual fountain head. We hope you will have a wonderfully pleasant time *after* the debate and we hope your conversation will be richer and more effective—*after* the debate.

The Negative of the debate will be defended by Washington and Lee and the Affirmative by Princeton.

The first speaker for Princeton University is Mr. Kreder.

FIRST AFFIRMATIVE

K. H. Kreder, Princeton

MR. CHAIRMAN, LADIES AND GENTLEMEN: On behalf of the Princeton University team I take this opportunity to tell you that it is a pleasure to be here and we certainly are grateful to the members of this University for according us such a generous welcome.

The question we are here to discuss is: RESOLVED: That national advertising, as now carried on, is both socially and economically harmful."

At the very outset of this debate, we should like to make it very clear that we are not arguing against advertising alone, but on advertising, *as it is carried on today.* There is a great difference between approving of advertising in general and approving of advertising as it is carried on today. We shall make no attempt to prove that advertising in itself is harmful; we agree that advertising in itself is good; that a certain kind of advertising, to a certain extent, is good, and so long as it is informative and educational it is approved by us. It is only national advertising, as it is carried on today, that we claim is socially and economically harmful.

We should furthermore like to make clear that as members of the affirmative team, the burden of proof rests upon us. We will bring certain charges against advertising, which the members of the opposition must answer.

Someone has said, as the Greeks offered invocations to Zeus and the Mohammedans to Allah, so the modern man offers invocations to the Great God Advertising.

Take the case of the young man of today:

He is awakened by the ringing of a Westclox—"no bed-room is complete without one." He throws back the covers and steps out on an Armstrong Quaker rug; sets the Victrola lever and does his "Daily Dozen." He then dons his "Shorts"—"the latest in underwear for men,"—a two-dollar Oxford shirt—"the college man is wearing them," and, remembering that shoes make the man, he selects a pair of Florsheims—"for the man who cares"—a Rajah type four-in-hand tie, and a Kuppenheimer suit—"for individuality"—if you please.

Going downstairs, he selects one from a long list of highly advertised breakfast foods, and then orders orange juice—(and I am actually quoting from an advertisement)—"orange juice that makes you irresponsible, irrepressible, irresistible—get it."

Our hero does not smoke, because he cannot decide whether he wants to be "nonchalant" with a Murad, or "satisfied" with a Chesterfield.

This reminds me of a story: I understand one of the famous Greta-Garbo-John-Gilbert scenes was nearly ruined because Mr. Gilbert was about to "reach for a Lucky Strike instead of a Sweet."

This seems very trivial and it is perhaps silly, but when you look at the serious side of the question, you will find there is a very serious side. A great portion of our lives is being swamped in trivialities; we are wasting our energy, and our attention is being taken from the vital things of life and we are putting our thought and our attention on clothes, dress, cars and luxuries. This is one of the foremost evils of national advertising, as carried on today, causing us to devote too much time to the things that do not amount to anything, so that there is little time left to devote to worth-while things—a development of the external rather than a culture of the internal.

I thank you very much.

FIRST NEGATIVE

R. O. Morrow, Washington and Lee

Mr. Chairman, Ladies and Gentlemen: My friend from Princeton has presented his case in a delightfully entertaining manner; intercollegiate debating should have more of such humor and wit and I wish to congratulate him on his truly clever remarks. I am sure the audience have appreciated it and I assure you that we appreciated it. I enjoyed it more for I feel that the gentleman, although speaking from the affirmative stand-point, has given a speech entirely in our favor, for judging from the reaction of the audience to these foolish advertisements (which he claims do a great amount of harm) people take them merely as a joke. That is characteristic of the American people—such advertising is always taken as a

good joke. How many of you here tonight have ever actually been harmed by this source of delightful entertainment? I hope the second speaker of the Affirmative will quote more of these entertaining slogans. I am sure they will harm no one.

I should like to continue along my friend's humorous course but, for the sake of variety, I am forced to take a bit more serious aspect. Let us consider advertising as a whole; just as the gentleman asked that we should, rather than insist on a few of these so-called foolish advertisements. Just what is advertising? The word "advertising" comes from the latin "adverto"—meaning to turn toward. Advertising does exactly this—it turns the attention of the people toward our many manufactured products. It is a system which tells the people thruout this nation about these products and a system which educates the people to the quality of each. A system which is so efficient in telling the people about things used in the home and on the person is not harmful and is, I say, an economic and social benefit.

We admit some people mis-use advertising, but for that reason can we call the entire system harmful? Would any one contend that because automobiles are used by crooks in unlawful pursuit, that the automobile industry is socially and economically harmful? Whatever may be said against it, the fact remains that only by advertising are hundreds of thousands of people told about thousands of helpful and delightful products.

The essence of the serious part of my opponent's speech is simply this: That advertising with its continual bombardment of pictures, color and bargain prices causes people to buy what they otherwise would not buy. In the first place, it is wrong to suppose that advertising encourages a man to buy until he is financially prostrate or nearly so. How often does one see a man in rags, gaunt and weak from starvation, clinging to the steering wheel of his new automobile, which advertising has forced him to buy?

We admit that some people buy more than they should, rather more than they can afford, but advertising should not be held responsible for that. Advertising has less to do with man's actions than parents, schools, newspapers, movies or life itself.

No one disputes that advertising encourages people to buy, but people have judgment, and people buy helpful and necessary products. It is certainly not harmful for a man to be encouraged to buy soap, vacuum cleaners and many other modern necessities. A big virtue of advertising is that it encourages people to save, to buy insurance, to build their own homes, to educate their children, to keep their bodies fit, to make their homes more comfortable and more attractive. Take insurance, for instance: Our country is being educated to the many benefits of insurance by the sound advertising of our big insurance companies. From this it is obvious that the encouragement to buying which advertising offers is not harmful but is one of the greatest factors contributing to our high standard of living.

Granting that there are some mis-uses in advertising (which in their respective isolated cases may be harmful) we cannot call a system, which tells millions of people about thousands of necessary and delightful products, harmful. Because many letters are lost in our mails every month, can we call our mail system harmful? We cannot argue on a basis of perfection; we are not living in a Utopia but are enveloped by the realities of this world. And we must remember that an institution which is so great a social and economic benefit and which has so few faults, is held as good, and is not harmful, at least until a better system operates.

SECOND AFFIRMATIVE

W. W. Haynes, Princeton

Mr. Chairman, Ladies and Gentlemen: I am afraid our opponent misunderstood us. I am sure we are perfectly serious about the whole affair and I do not want him to get the idea that we are trying to make fun of advertising in any way. I am also sorry I do not know any more slogans to tell him for I would like to entertain him; but I will say I do know some good jokes which I will tell him if he comes around after the debate.

I am going to talk about the economic question now, and before I start I should like to tell you a story:

Once upon a time there was a little boy and the little boy liked to run and play, but he could not run fast enough to

suit himself, so he got himself a pony, and he found out when he got on the pony, he could go faster than when he was not on the pony, and one day he was riding his pony around and suddenly he looked at the ground and he saw the ground way down there below him; it was terribly far; and he became very much frightened; the ground was so far down there, he was afraid to dismount. Just then the pony commenced to rear and buck and kick and run and the little boy became more and more frightened. Then the pony turned its head around; looked the little boy in the eye and the little boy became more frightened; and the little boy looked at the pony and it was not a pony at all, it was a giraffe and the giraffe ate the little boy up.

I made up that story. I don't know how good a story it is, but otherwise, I think, it is all right.

It was this way some time ago, back in the '80's and '90's. Big business commenced to grow in this country, the industrial revolution; it is similar to the revolution that takes place in a man's life when he gets married. Anyhow, big business started up and big business found it could not go as fast as it would like to go, so it commenced to advertise and found it could go faster than before it advertised, and finally from this, advertising itself commenced to grow and before it knew it big business found it was riding not a pony but a giraffe and it had gotten on and it could not get off again. What I am referring to is national competitive advertising today, on which business is riding around and whether it gets eaten up or not depends on whether it can get its feet on the solid earth.

Business cannot dismount because if an individual stops advertising, he, of course, gets it in the neck instantly. No individual can withdraw; his competitor would crush him.

Back at the same time, in the '80's and '90's, we had unrestricted competition in this country, and then the trusts began to grow, the Rockfellers and Carnegie and others began to build up big business and big monopolies and to absorb or force out sources of competition. Then the government stepped in and undertook to regulate competition by the Interstate Commerce Commission, the Sherman Anti-Trust Law and such things as that. It did not stop competition; it was simply transferred to advertising and now we have, instead of rate cutting and things like that, modern national advertising.

Unlimited competition always results in monopoly, and here it has resulted in monopoly and the big business man crushes out the small business man by advertising, and particularly susceptible is the small business man who cannot advertise his product. The tendency is to increase the outlay for national advertising; one man spends so much and the next man spends a little more and the third fellow must spend even more and every man is straining and saving and using every effort he has got for advertising; putting everything into displaying the product, instead of building up the product.

We have said, the first speaker for the Affirmative, that the purpose of advertising was to inform; but is advertising, as now carried on, informative? The motto of one of the greatest advertising concerns in America is: "Repetition is reputation." Is that to inform? You cannot get much information from that. To hammer in their motto,—to beat down the consumer's will power is their aim. It is wastefully competitive.

Another fact I wish to emphasize is that modern national advertising has made possible the production and the purchase of products which are comparatively non-essential, the luxuries, if you will, when a great many of us may not have all the necessities of life. The reason is that national advertising has stimulated a demand for these non-essentials. Since you can sell by display, it is as easy to sell the luxuries as any other thing. It works in an inverse utility manner: the things that sell themselves require the least advertising to sell them, and those which people would not naturally want,—the luxuries and non-essentials,—you must advertise more to sell, thus the bulk is naturally the advertising of things which are comparatively non-essential, like cigarettes, cosmetics, we will say,—things which are comparatively non-essential. The poor consumer, alas, cannot distinguish between the advertising which is good and that which is bad.

We have freedom of the press—they charge you $8,000.00 a page but they call it freedom of the press—and the advertisers have taken every possible advantage of it and used up all the superlatives in the dictionary. You can see by their mottoes just how it works—sell the consumer. Some one has defined the consumer as a man consumed with a burning desire to be sold. But he gets wise in time. After being sold one hundred or one thousand or more times, he becomes a second-hand,

worn and battered article; the advertiser cannot write on, "Sell the Consumer;" put on the market all these meaningless products and force him to stretch out for things that are comparatively useless to him, instead of necessary.

There are three ways of paying for national advertising: Increase the cost of the product; decrease the quality (if possible, of many); and decrease the wages paid the workmen. Any one of these methods imposes an economic burden upon society. Do we get the value of what we put into it, this wasteful competition, this production of non-essentials? Is it worth these three economic burdens, one of which, or all of which we must make?

If you could go up higher and higher and higher, up into the sky and St. Peter would let you enter and you would look down upon the United States, you would see some six hundred thousand men engaged in this business of advertising and they would be spending one billion five hundred million dollars upon it annually and using an untold amount of capacities, all in the production of this display and verbiage, the greater part of which is either actual misrepresentation or the repetition of information you already have, or the conveyance of information which is either useless or actually harmful to you.

You would be justified in asking what these poor fools mean by putting so much human energy in the production of such a comparatively useless product, and the only answer St. Peter could give you would be to say that these people, like the Children of Israel, have gone "a-whoring after strange gods"; they have builded an altar before the Golden Calf and come daily and annually to offer up human sacrifices and pay their tribute to this great false God of Advertising. Let us hope that his dominion may soon be broken.

SECOND NEGATIVE

W. A. Plummer, Washington and Lee

Mr. Chairman, Ladies and Gentlemen: I wish to repeat the statement of my colleague; the debate has been most enjoyable from the Princeton angle; it is indeed hard to meet such humor with facts and to talk cold figures. The preceding speaker based a good deal of his argument on the fact that advertising forces people to buy non-essentials or luxuries.

Let us go back some centuries and take the case of the cave man and see what he considered the essentials of living: First, a cave; second, a woman; third, a dinosaur—perhaps for milk; and fourth, a large club, with which to fight off his opponents. Those men lived! In fact, they were the fathers of our race. Be that as it may—they got along with four essentials. Do our opponents suggest that we give up everything we have today and go back to those four essentials? I think history will bear me out when I say that progress is civilization.

Our ideals of life and our standards of civilization are ever rising, we trust, and perhaps that may be one of the great advantages of national advertising—forcing us to buy what may be non-essential at the time.

In the first place, the gentlemen from Princeton cannot prove their contention by pointing out a few scattered defects in national advertising. We do not maintain that it is perfect or all inclusive. We maintain that it is a question of relativity: Does national advertising, as carried on today, accomplish more good than it does harm? We are convinced it does; they have failed utterly to convince us of the contrary. It must be remembered that the burden of proof is upon them; they must prove "That national advertising, as now carried on, is both socially and economically harmful;" that it does more harm than good.

With all due respect to the opinion of our visitors, we are convinced that national advertising has become not only a social benefit but has reached the stage when it is an indispensable necessity to our economic life and our commercial well-being.

We have all read of the old agricultural age, when each community had its own shoe-maker, its own hat-maker, when there was one trader, one craftsman for every trade; all worked by hand, assisted by a few apprentices who were learning the work. This craftsman was well satisfied with his monopoly of the local market.

Then came the machine and this led to the present great industrial age, bringing the factory system of labor and large scale production, and as the result of increased production the local market no longer was adequate. It became necessary to scatter more products over an ever widening area, and such markets could only be attracted by national advertising.

In this day and age of standardized products, the advantages

of which are so great, it is possible for me to mention only a few of the most outstanding:

Large scale production enables the manufacturer to give the purchaser a better product at a lower cost;

It enables the manufacturer to hire the best and most efficient workmen;

It enables the manufacturer to equip his plant with the most modern machines;

And it enables him to save money in the purchase of raw materials.

The truth of this may be seen by comparing any modern machine-made, factory-made shoe with a shoe made in an old cobbler's shop. I know we often hear older people speak of the undoubted superiority of hand-made products, but I fear distance has lent enchantment to the view. I am sure the gentlemen from Princeton would be a bit loath to give up their Florsheims or their John Wards for some crude, hand-made product of a cobbler, which would perhaps cost twice as much.

And whatever may be the defects of large scale production, our country's foremost economists will agree, it is anything but economically harmful—any system that will give us better products at lower cost cannot be economically harmful.

But you may ask: What has national advertising to do with the manufacturing system of production?

I will read you an extract from a letter received from the General Electric Company:

"To answer your question as to the value of advertising, I would say that if we did not advertise, the cost of disseminating the necessary information about our products would probably be many times our advertising expense; if it could be done at all. In other words, advertising to us is invaluable, because we cannot be in business without it."

The gentleman, you see, is willing to ride a giraffe, to be squeezed by a boa constrictor, to keep in business; and the General Electric, you will admit, is not going around in rags because it is spending all its money for advertising.

Why is it that such a company as General Electric could not be in business without national advertising?

The answer is this: the amount of investment required to maintain the unbelievably expensive equipment of such companies makes it absolutely necessary that its products be sold all over the nation; it can only afford to produce in large quan-

tities and these large quantities it must of necessity sell. For any product to sell, it must be before the eye of the public all the time. This can only be accomplished by two methods: First, national advertising; and, second, a method of direct approach, personally seeing or soliciting every prospective customer. National advertising has well been called the cheapest method of distribution, and the most economical means of obtaining a national market.

All the factories, automobile plants, every business of a nation-wide character today would go out of business tomorrow if every product had to be dispensed by the method of direct approach. Can you conceive of the sum of money that would be required for salesmen, or representatives, to see one-half the people who are reached every day by national advertising? You cannot conceive of the amount, because it could never be spent. Companies would go out of business first.

It is this system of national advertising which the opposition maintain is socially and economically harmful. To sustain such a stand, they must show that the entire system of large-scale production is socially and economically harmful, for the two are plainly interdependent. Tear down the factories and dissolve the corporations, and national advertising will die a natural death; or do away with national advertising and our national business will fall by the wayside, and we will again be served by the local tailor and the Main Street cobbler and we will all be rolling our own cigarettes, once more. Balance the considerations, Ladies and Gentlemen.

Are we to condemn national advertising, with all its benefits, because some workman of doubtful mentality is thereby deluded into buying a Rolls Royce and a radio with baby's milk money, or some singer "sells her birthright for a mess of pottage" by attributing the tone and quality of her voice to the use of some well-known brand of cigarette? I leave the question with you.

THIRD AFFIRMATIVE

John E. Thiele, Princeton

Mr. Chairman, Ladies and Gentlemen: I wish to pay tribute to the splendid manner in which my opponents have presented their side of the question, but I am happy to say

they have not affected our views. In the first place, I should like to mention the fact that we are debating this question: "Resolved: That national advertising, as now carried on, is both socially and economically harmful." They are debating: "Resolved: That national advertising, as now carried on, does more harm than good."

We cannot meet on that ground at all. It involves a great principle; it is not a question of big business and of advertising as a general principle. We are criticizing the way the theories are being carried out. In the trust war, you did not find people saying big business was bad; that they were going to reform big business; but that they were going to place restrictions on it. We are not going to plead that national advertising is one-half of 1 per cent evil; that we ought to have a big reform. We feel the charges we are bringing are sufficient to warrant some sort of restrictive action, and we expect the Negative to answer our charges. As far as their arguments so far have gone, you might as well say, democracy is a fine principle, therefore, we ought to re-elect the governor. Mass production is a good thing, therefore, although the advertisers' "sins be as scarlet, they shall be as white as snow."

From the answer to our charge that national advertising, as it is now carried on, is making us extravagant and is used to make people live beyond their means, it is apparent that the Negative has read Mills and strongly believes that every man has a right to be a sucker; that Barnum was right when he said he could put it over on the people. Certainly the advertisers are doing it but certainly the nation's suckers are not socially and economically benefitted thereby. We have a few restrictions upon the activities of confidence men. Why not upon advertisers as well?

Advertising creates false values—we buy the outside. From the negative point of view, you would think advertising had raised the standard of living; but the advertiser starts at the wrong end to accomplish this; his purpose is merely to separate the average man from his pocket-book; and I would hardly call that a public service.

There is a constant distraction, by dragging new and enticing objects before us. If you have a Ford, the ads make you unhappy until you buy a Buick; and after you have a Buick, then they make you believe you must exchange it for a Cadillac;

and then they tell you you must have two cars, and you believe it.

I was interested the other day to read a remark that Roy Durstine made against a criticism of Stuart Chase. Roy Durstine is a good advertising man. He said: "It is all right for every man to have his own view-point; but the trouble with Mr. Chase's point of view is that other people adopt it as their own, as a house adopts paint—by having some one lay it on." That is what I think about advertising—we read the ads over and over until we believe them, and we do not know a thing about the quality of the product advertised.

Take the holiday season: Formerly, it was a religious celebration. Now it is more like a day on the stock exchange, with everybody trading and complaining about their bargains.

Some mention has been made of the paid testimonials. I would hardly call the present day testimonial an encouragement to the future historian, however good they may be for business. When Captain Fried signed a testimonial for the Lucky Strike cigarette, he was not using his own words, perhaps he did not even read the ad. Why did he do it? Because his job depended on it. The United States Lines wanted publicity and they knew that was the way to get it.

And take the matter of Mr. Raskob and the Ampico. I understand when the American Piano Company went to Mr. Raskob for this testimonial, he said he was greatly opposed to any sort of mechanical music. They said they would give him $5,000 if he would permit them to place an Ampico in his home; leave it there for a day; have it played on; then it could be taken away; but he could say he had an Ampico in his home. He finally did it and got the $5,000.

As has been mentioned by the first speaker on our side, advertising distracts us from the cultural side of our existence, and keeps our attention constantly directed to the material things of life. It is all right to be reminded of the mechanical conveniences, but I do like to see our fields and forests, and when one can never get away from the ads for a moment, it becomes irksome.

Recently, I was riding through the South and I had a great desire to read some of Shelley and I punctuated the lines with glances out of the car window, and this is how the poem, the Indian Serenade, read:

INDIAN SERENADE (Indians Chewed Cascara Bark)

I arise from dreams of thee
In the first sweet sleep of night;
(Universal puts the world to sleep)
When the winds are breathing low
And the stars are shining bright.

I arise from dreams of thee,
And a spirit in my feet
(Blue Jay, the safe and gentle way to end a corn)
Hath led me—who knows how?
To thy chamber-window, Sweet!
(Lucky in Love)

O lift me from the grass!
(Townsend mowers)
I die, I faint, I fail!
(Is your family provided for?)
Let thy love in kisses rain
(Tango rouge—all shades)
On my lips and eyelids pale.

My cheek is cold and white, alas!
(Bayer Aspirin)
My heart beats loud and fast;
O! press it close to thine again
Where it will break at last.
(And then he got his Philco).

I may be an aesthete in your opinion, but I do like to get away from the business of living, from the tools of life; but how can you with bill-boards from coast to coast, and with signs in busses and trolleys and even with automobile tires shouting messages about something or other.

However, I think one of the worst and most pernicious things about national advertising, as it is carried on today, is the appeal which the ads make to our lowest motives—our vanity, our bodies, our old friend sex appeal. You may say it is not the ad's fault if people are vain; if people like to keep up in the procession, and certainly not the ad's fault if a woman's body prove more interesting than the Fisher body.

Nevertheless, it is true that our natural desires are greatly strengthened by this stimulation. If attention is constantly directed to our external aspect, neglecting the internal; and if we are constantly enjoying the companionship of the girl friend or the boy friend by reading the ads, and seeing them pictured in enticing postures and costumes, what more natural than that we should go out to find that companionship? And wha' more natural than that the girl who buys "Kiss-Proof Lip Stick" should immediately wish to go out and test it?

I should like to speak for a moment about an extravagant proposition. The gentlemen of the opposition say people know best whether they can afford things and should be privileged to do what they want with their money. How many of you have heard of the installment plan of buying? It is a plan by which you can get a thing for almost nothing; but the catch is, you pay a dollar a week for the rest of your life. As the result of this sort of buying, in 1926, five billion dollars out of the purchasing power for 1927 had already been mortgaged ahead by the people, and the amount is increasing every year.

When the average man is earning less than twelve hundred dollars a year, you cannot say that the people of America are privileged, by and large, to enjoy luxuries at the expense of necessities. Let me compare advertising to a stream: At one end is mass production; at the other is the consumer. Mass production sends the luxuries down the stream—it is a wonderful service that the stream renders—but as soon as the stream overflows its banks and scatters debris all over the town, it is no longer a benefit, and something must be done to hold the river in its course; and that is how we feel about national advertising, as now carried on.

We make these charges against national advertising, as now carried on:

1. It over-emphasizes the material things of existence.
2. It urges us to live beyond our means.
3. It encourages dishonesty in business.
4. It appeals to our lowest motives.

If the American people would only come out of their lethargy and step aside and listen, perhaps they could see something of their country after the bill-boards were pulled down; and after ceasing to worship the Great God Advertising, they might find some truth in Christ's words when he said:

"The life is more than meat, and the body is more than raiment."

THIRD NEGATIVE

J. R. Moore, Washington and Lee

Mr. Chairman, Ladies and Gentlemen: The gentlemen of the Affirmative in the discussion this evening have taken it upon themselves to—I feel I may be justified in saying—reverse our case. The preceding speaker made the statement that the Negative claim that national advertising is doing more good than harm. Probably he was mistaken in what he said—I do not know. At any rate, we are not debating that national advertising is doing more good than harm. We claim that the gentlemen should show us, before they can declare that the national system of advertising, as carried on today, is harmful, that they must show us more harms resulting from it, more evils than goods.

If the gentlemen say that national advertising, as it is now carried on, is both socially and economically harmful, I should like to ask them how they account for the demand which makes possible the increased production of American industries without causing over-production and unemployment? Also, to what do they accredit the increased standard of living of the people of the United States?

They have asked us: "Is advertising informative?" In answer, I should like to read part of a letter from the General Electric Company, which I feel is a corporation sufficiently respectable to satisfy our opponents. We wrote them, asking this question: "What value do you attach to advertising?" This is their reply:

"We must *inform* the people what products we have that they can use. We must also explain to them how they can use our products in such a manner as will benefit them."

Does this look as if national advertising is not informative? Let us look at it squarely and see if an evil really exists or not:

When new products are thrown on the market, they must either wait until the people learn of them by means of gossip, or else through national advertising a demand can be created for them by high pressure education. Which is better for the

people and the producer?—unquestionably, national advertising. Advertising, like all other business, is not perfect, but obviously the better business men of our land think it is the best possible means of informing the people of their new products and inventions, or they would not use it.

Indeed, we believe that national advertising is not only not economically and socially harmful, but actually a social and economic *benefit.* I am convinced it is a social benefit for two reasons:

First: Because our products have been improved and raised to a higher standard through national advertising; and

Second: Because higher and better ideas of living have been brought before the American people as a whole.

I am sure the gentlemen from Princeton will agree that if national advertising has brought before us higher and better ideas of living, surely it is socially beneficial. Advertising aids in making sales; it is the link between the man who has something to sell and the man who desires to buy—it is the mouth-piece of business.

There seems to be no more reason for attacking advertising in general, because of its few petty abuses, than for attacking the United States mail service, because blackmail letters go through it. No one condemns motor trucks because children are sometimes killed by them.

Merchandise that is sold by name is almost always better in quality and usually no higher in price than goods of uncertain lineage and less certain quality. Manufacturers, who advertise their products consistently, must be very sure of their quality. When a housewife goes to the store to buy baking powder, she does not have to consult the chemist; she has read national advertising and she knows that the label on a nationally advertised product means quality. Who questions the stability of an article advertised by the General Electric Company or by Westinghouse? Or the quality of Postum cereal or of dozens of products that are nationally advertised? When you see their label on a product, you know it means quality. These great companies spend huge sums of money on national advertisements, and unless they place a product on the market that compares with their advertisements, they realize that all of the money spent by them on this advertising would be a total loss.

Roger Babson says: "Exaggeration in advertising makes no

impression on the American people today, except one of contempt; advertisers must be truthful and honest and just if their products are to stand the test."

National advertising brings to people things that were formerly beyond their imaginations. For example, the electric refrigerator. Women have long known the use of a refrigerator, and the ice man has been a regular visitor through the summer months. But few women ever dreamed that electrical energy could supply the need for ice. It was beyond their imagination. What woman of twenty years ago would have exchanged her ice man for a Frigidaire?

Today, the world is literally at our doors. A spin of a dial, and we listen to the President in Washington or to a football game in San Francisco. Our automobiles whisk us over smooth boulevards to new scenes. Monday is no longer blue; the family washing is done by electricity; so too, is the cooking and preserving of food and sweeping of floors.

Now, where did we *first* learn of these things? My opponents must agree that we learned and are learning of them through national advertisements.

How many people would have a radio in their homes today were it not for national advertising? How many housewives would have any modern conveniences were it not for national advertising? Try to visualize the number who now have these conveniences and comforts and compare the number who would have them if they had to be sold by personal salesmen. Think of the time that would be needed to accomplish this and the great expenditure of money it would require to hire these men to go over our land, and I am sure the outstanding advantages of national advertising will stand out more clearly in your minds.

Does this not look as though national advertising is a social benefit? It is the means by which these improved products, which add so much to the joy of living, are brought to the house-wife; products which make her no longer a slave to drudgery; but, which, on the other hand have elevated her and given her ample leisure for reading, for study and for social life. If you have elevated the standards of our citizens by national advertising, does this look as if it is socially harmful? Can the gentlemen from Princeton show us a house-wife who has been harmed by these modern conveniences; or can

they show us how we here tonight have been harmed by national advertising?

National advertising, through its repeated appearance before the public eye, has not only improved our products, but has brought before us better and higher ideals of civilization and living. It has been one of the chief factors in making Americans the greatest users of soap and water in the world; it has disseminated information concerning health and sanitation; it has taught us how to care for our hands, our hair, our complexions. Again I should like to ask you, does this look as though national advertising is actually a social harm? Does it not seem socially beneficial, since it has raised our standards of living to such a high level?

In conclusion, I should like to say that because various products have been bought through national advertising; because these products have been improved through national advertising; and because higher and better ideals of living have been given the American people as a whole, we, of the Negative, still believe that national advertising is actually a social benefit.

We are still waiting for our opponents to show us any appreciable harm in national advertising. If the minor abuses of national advertising constitute good reasons for declaring it harmful, then, by all means, let us recognize that the best scrubbed infant remains slightly soiled by the soap-suds and let us "empty out the baby with the bath water!"

CHAIRMAN: According to the rules of the debate, each speaker was entitled to fourteen minutes, to be used as he chose. One of the Washington and Lee speakers elected to use his entire time in the direct statement, so we will hear two Washington and Lee speakers in rebuttal. Two of the Princeton speakers used their entire time in the direct statement, so we will hear one Princeton speaker in rebuttal.

FIRST NEGATIVE REBUTTAL

R. O. Morrow, Washington and Lee

MR. CHAIRMAN, LADIES AND GENTLEMEN: The second speaker of the Affirmative has aroused my curiosity by saying that he had some good jokes which he would tell me after the debate.

I wish he would change them to stories,—on one condition, that they are his own.

Thruout the gentlemen's entire speeches, they have told us that they admit our statements, that national advertising is necessary and beneficial; and they say, because we have insisted on pointing out its benefits, that we have failed in proving that in some respects it is not harmful. Now we believe that in pointing out the many benefits and comparing them with the small number of so-called harms, we are using the best method to discover whether or not advertising is really harmful.

They say millions of dollars are wasted annually on circular letters which are not read, but go to the waste basket unopened, and on advertisements in newspapers and magazines, only 15 per cent of which are read. This may be true; however, it is not a waste but a necessary cost. The fact that this is true is shown by these figures: A certain company sent out one thousand circular letters and, as a result, received twenty-five orders. Thus it took one thousand letters to find the right twenty-five people. The letters that did not bring in orders were not wasted, but were a necessary expenditure. A salesman has to make several attempts for each sale that he completes; his energy and time used in these attempts cannot be considered a waste, for they are necessary, and therefore a necessary cost.

The gentleman has remarked that bought testimonials are harmful. Now we admit that there are numerous bought testimonials, but there is no appreciable amount of harm in them. If a company should get the Prince of Wales to endorse their product, I dare say, no harm would come from it; what does the public care if some movie star signs his name at the bottom of a page of advertising? I wonder if any of our friends from Princeton have ever actually been harmed because the celebrated Adolph endorsed Old Golds by the blindfold test; or because some fair actress said, "Eat yeast cakes and enjoy life." Bought testimonials are merely a harmless fad, which will die out with popular disconcern.

The gentleman has stated that there is an exorbitant cost in advertising, and that this cost is harmful. It is true that over a billion and a half dollars are spent annually in advertising, but of this billion and a half only a hundred and twenty-

five million are spent in "national" advertising. We must remember that any accumulative figure seems exorbitant. Let us take the cost of one concern, for example the General Electric Company. This Company spend only 2 per cent of their income in advertising. Is this exorbitant?

Our friends have pointed out that many advertisements are misleading. What can be said about these so called "misleading advertisements" is simply this—they are not to be taken literally—and any one with a child's reason, knows this to be true. The advertisement "Not a cough in a car-load" is merely a clever way of saying that Old Gold cigarettes are easy on the throat. This kind of advertising is neither harmful nor unscrupulous, but a clever and attractive way of catching the public eye. The only thing that such advertisements can possibly do is to encourage people to buy. Thus if the product is not harmful then the advertisement is not harmful. The slogan "Even your best friend won't tell you" encourages people to buy listerine. If listerine is a harmful product, then the slogan may be called harmful.

My friend has presented a composition involving railroad trains, bill-boards, and Shelley. This poem, on which many hours were doubtless spent, is indeed most humorous. We have enjoyed it immensely. However it only helps to show that the worst thing that can be said about advertising is that it furnishes very good entertainment.

Considering advertising as a whole, and comparing its multitude of benefits, with its minor number of misuses and so-called harms, and realizing that every modern convenience is placed at our disposal because of advertising, we cannot call national advertising harmful.

SECOND NEGATIVE REBUTTAL

W. A. Plummer, Washington and Lee

Mr. Chairman, Ladies and Gentlemen: As to the Kiss Proof Rouge Stick, if it should have the effect of making the young lady wish to test it, it would certainly help along a good cause, I should say.

That the modern practice of buying testimonials as to the quality of products of all kinds is an evil in advertising, I must

disagree. It seems to me it is just an indication of the weak business ethics of the company so advertising. We do not say business is wrong because one man lies to his customers; because a horse trader over-estimates the speed of his horse, we do not condemn all horse-trading.

In their argument, our opponents have made a great deal of the fact that money paid for advertising is wasted because it is kept from the improvement of the product, but the most important part of the question has not been considered:

When a consumer pays $8, we will say for a fountain pen, perhaps eighty cents goes to advertising. If there were no national advertising, not nearly so many pens could be sold and the cost would be higher, if the company could do business at all. It is plain, when these two factors are considered, that the consumer is not being so badly treated as my opponents would say. Could a fountain pen company stay in business, with limited advertising, if pens of equal value were being sold by another company using national advertising? I think my opponents would have to search far and wide to find capital to back such a factory.

The money spent on national advertising is not money wasted. Through the amount of money it saves by making large scale production possible, it has brought about a situation where a commodity, costing the nation $1,500,000,000 a year, actually pays for itself.

AFFIRMATIVE REBUTTAL

K. H. Kreder, Princeton

Mr. Chairman, Ladies and Gentlemen: I am sorry I am not a poet, therefore, I cannot give you any more poems about advertising. I would say, however, in reference to the harm that has been done the housewife by national advertising—that there is one thing that has been harmful in respect to her after all: the Frigidaire has deprived her of the ice man.

In closing, we should like to get this question very clear in your minds. Those of you who have programs will probably read this as I do: Resolved: That national advertising, as now carried on, is both socially and economically harmful."

We do not have to prove that national advertising is 99.4

per cent harmful; we have to point out to you that national advertising is harmful; all of our points are minor; all the points of the members of the opposition are major. And granting that each of our points is minor, massed together they become very important. They say advertising has done a lot for education; we have vacuum cleaners and radios. That has nothing whatever to do with the discussion; we grant that it has.

Some one said my first speech was very entertaining; I wish to thank him for saying that. He said the mere fact that you laughed at it proved that the trivialities of life are not very harmful. Well, there have been times when we laughed over corn liquor.

The members of the opposition admit national advertising causes people to buy things they cannot afford, but they say this is a good thing, for then they become necessities. That seems to me a weak argument. If you are constantly encouraging people to buy things they cannot afford, you will become short on the exchequer. We college men all know if we spend our allowance before the 15th of the month, it works quite a hardship on us for the next two weeks—unless our room-mate happens to have money. It becomes a serious thing if we persist in buying things we cannot afford and causes a great deal of suffering on the part of others on account of us. When any one says it is a good thing to encourage people to buy what they do not need, it is a poor argument and a bad principle.

We admit that advertising is an indispensable necessity—we made that clear in our three previous speeches. Our opponents say it lowers the cost of production—that you can make a better product at a lower cost and that it is the cheapest method of distribution. We say that has nothing to do with the discussion here this evening.

They say advertising is educational, because a letter written to the members of the opposition by the General Electric Company says that this is true. All we need to do to refute that is to set out some other circular letter, from some other large corporation, stating that it is not true. That is not a sound way of proving the contention.

They ask: How do we account for the increased production of 1929 over some previous year? I might say it was due to advertising; but that has nothing to do with the discussion.

They ask: What has caused the raised standards of living of the American people? Herbert Hoover told us last August it was the Republican party. The Savings Banks say it is because the common man deposits his savings with them. Only four days ago, a Congresswoman said it is woman's suffrage which has done this for us. It is indeed hard to decide what has brought about the progress of the 1929 age.

They say advertising is the best method of educating the people. Perhaps it is. Here in our institution we take it from the books. Perhaps it is the wrong way—we should study the ads.

As to the truth of advertising, they tell us it is to be taken with a grain of salt and not to be swallowed whole. You know if you are told about a thing over and over again, whether it is good or bad, you are bound to be impressed by it. We take it with a grain of salt, to be sure, yet these ads have brought the average age of beginning smokers down from sixteen years to eleven years—a minor point in their estimation; in mine very important.

The discussion has been conducted upon two entirely different principles: Our opponents say advertising is a good thing; America is the greatest nation in the world; mass production has increased the standards of living, therefore, advertising is a great thing. Certainly it is.

We say: "National advertising, *as now carried on,* is both socially and economically harmful." Going back to the former illustration, we say advertising is the river and it brings good results. We would not do away with the Mississippi river because we had a flood last year. But we say it is harmful in the harmful places, when it gets out of bounds, and that it ought to be kept in its place. In other words, we should take some means to see it does not happen again. We do not say when advertising is educational it is bad; but that it is harmful in places; that there are a lot of evils connected with it and that these should be fixed up.

We say national advertising swamps our lives in trivialities; that it imposes upon us false standards of life. Here is evidence that we are impressed by these slogans. Tonight, for instance, I was about to put on a polka-dot tie; I should have preferred to wear that tie; but I remembered it is not being done, so, like other well-dressed men, I am wearing the conventional evening tie.

We say national advertising is economically wasteful. Our opponents say: "Well that is all right; look at the good places; we are doing some good. But we say that national advertising is harmful and we want to make it a whole lot better. The cigarette manufacturers are spending $25,000,000 to $30,000,000 on advertising cigarettes. Why not say this to them:

Instead of spending that $30,000,000 on national advertising and forcing other companies to spend perhaps $100,000,000, let us, the consumers, make our own choice of what we shall smoke. Certainly, this would enable them to bring down the price of their product.

Our opponents say national advertising is saving the consumer money. If that be true, why not save more? If the consumer is paying $2 for an ordinary fountain pen, because of this national competitive advertising, and we have shown him how he can buy the same pen for $1.50 without that advertising, would not that be better for the consumer?

We approve of advertising; but we say it is harmful, *as it is carried on today;* and we want it changed; we want to fix it up. We have given you a number of points why we think it is harmful; our opponents have shown you that advertising, in itself, is good, which we have granted. As members of the affirmative team it was necessary for us to prove that national advertising, *as now carried on,* is both socially and economically harmful, and we feel that we have done this.

CHAIRMAN: Will the audience now take their $8 fountain pens and mark their reaction on the ballots; and, when completed, pass them to the aisles and the ushers will gather them up. The ballots will then be counted and the decision announced. During this interval we hope you will ask the speakers questions. They have told me, individually, that they have not been able to tell you all they know about advertising, and you are requested to make this an open forum for the clearing up of any points in the discussion you may wish elucidated.

(An open forum of about thirty minutes followed.)

CHAIRMAN: The ballots have been counted and we find the Affirmative, which was debated by the Princeton University team, received thirty-three votes, and the Negative, which was debated by the Washington and Lee University team, received

forty-three votes. The audience, therefore, has declared the Washington and Lee University team the winner of the debate.

I now declare the Intercollegiate debate between Princeton University and Washington and Lee University closed.

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Nation. 122:676. Je. 16, '26. Truth in advertising. W. Coombs.
Nation. 125:202-3. Ag. 31, '27. Honesty in advertising. R. Fuller.
Nation. 128:278-9. Mr. 6, '29. Publicity gone mad. S. Lewis.
Nation's Business. 15:90. D. '27. Story of advertising. H. H. Boyce.
Nation's Business. 16:24-5. Ap. '28. That the people may know. Bruce Barton.
Nation's Business. 16:15-16. Je. '28. Wanted: a yardstick for advertising. C. D. Garretson.
Nation's Business. 16:29-30. Je. '28. The machine that creates desire. Roy Durstine.
Nation's Business. 17:35-7. Ap. '29. Is modern advertising justified? L. D. H. Weld.
New Republic. 51:271. Ag. 3, '27. Repetition is reputation.
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Outlook. 130:274-5. F. 15, '22. Ethics of advertising. S. R. Hall.
Outlook. 143:475-7. Ag. 4, '26. Do you believe in ads?
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Pictorial Review. 30:8. Je. '29. The dollar-a-year graduate school; the part advertising plays as a guide to buying. Stanley Resor.
Printed Salesmanship. 50:331-4. D. '27. Wild claims and reckless promises—are they so necessary after all? R. W. Johnson.
Printed Salesmanship. 52:37. S. '28. Beware of the advertising dogma. Lord Leverhulme.
Printers' Ink. 137:73-4. O. '28, '26. Resolved: advertising plays too large a part in modern life; Cambridge debating team wins an affirmative decision. B. A. Grimes.
Printers' Ink. 138:3-4. Mr. 24, '27. How modern selling and advertising can check unemployment. J. J. Davis.
Printers' Ink. 140:3-4. Jl. 28. '27. Advertising is about to be de-bunked. J. H. Collins.

Printers' Ink. 141:128. D. 15, '27. Is advertising a service or commodity?

Printers' Ink. 141:109-11. D. 22, '27. Economic value of advertising.

Printers' Ink. 144:3-7. Ag. 16, '28. Business built on sand; private brands versus quality advertised goods. Emil Brisacher.

Printers' Ink. 145:164-9. N. 8, '28. Where are we going in advertising? Raymond Rubicam.

Printers' Ink. 147:41-2. Ap. 25, '29. How shall advertising silence its critics? W. A. Strong.

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Quarterly Review. 250:113-27. Ja. '28. Place of advertising in industry. Lawrence Weaver.

Sales Management and Advertisers' Weekly. 13:845-6. N. 12, '27. Personally-conducted tours behind the scenes of advertising. A. R. Barkley.

Sales Management and Advertisers' Weekly. 15:136. Jl. 21, '28. Englishman's reaction to American advertising. G. Russell.

Sales Management. 18:235-6. My. 4, '29. What does the consumer think of advertising? J. T. Pyle.

Saturday Review of Literature. 5:372-3. N. 17, '28. The United States of advertising. Earnest Elmo Calkins.

Scribner's Magazine. 84:602-7. N. '28. Business men of letters. Gerald Carson.

Virginia Quarterly Review. 5:346-62. Jl. '29. The tenth muse. Wilson Follett.

Woman's Home Companion. 56:13-14. F. '29. Emancipation of the housewife. Earnest Elmo Calkins.

Woman's Home Companion. 56:14. Mr. '29. What advertising really is. Earnest Elmo Calkins.

Woman's Home Companion. 56:25-6. Ap. '29. Has the advertiser kept faith? Earnest Elmo Calkins.

World's Work. 52:413-21. Ag. '26. Phenomena of modern advertising. Frank Presbey.

World's Work. 58:72-3. Je. '29. The newer competition. George Washington Hill.

Yale Review. 16:691-709. Jl. '27. Two kinds of news. Silas Bent.

CHAPTER IX

GOVERNMENT OWNERSHIP AND OPERATION OF POWER SITES

BELOIT COLLEGE

versus

PURDUE UNIVERSITY

RESOLVED: *That the public should own and operate all hydro-electric power sites not already operating under private control.*

Arrangements were made to have a stenographic report taken of this debate, but because of certain difficulties, the stenographers were only partially successful. Consequently there are reproduced here all of the affirmative and one only of the negative speeches, in the debate between teams representing Beloit College and Purdue University, which took place on March 7, 1929, at Beloit, Wisconsin. The debate was judged by C. P. Lehman of the University of Wisconsin graduate department. The decision was in favor of the Affirmative. The material for this debate has been secured by Professor G. F. Rassweiler, Coach of Debate for Beloit College.

BRIEF

GOVERNMENT OWNERSHIP AND OPERATION OF POWER SITES

AFFIRMATIVE

INTRODUCTION:

A. Own and operate shall be taken to mean the actual generation of power upon power sites now owned by the government, and shall not be construed to introduce the phases of sale or distribution of the power when generated.

B. The term Public shall be taken to mean any government whatever, whether it be state, national or municipal.

I. Control of the generation of power in the United States is a very vital question.

A. The power industry is one of the largest in the country.

1. 8,000 private plants generate steam eleven and six-tenths billion K.W.H. per year.

2. 10,000,000 tons of coal are used annually to produce electrical power.

3. Over 7,500,000 K.W.H. are generated annually by water power.

B. The electrical industry has developed more rapidly than any other.

1. In 1881 there were 8 plants; now there are 8,000, or an average of 260 new plants each year.

2. Electrical appliances attest the growth of the power industry.

3. There has been remarkable development in mechanical and scientific aids.

C. The electrical industry has an enormous future. Raushenbusch says so in *Power Control.*
   2. Water power to the amount of one-sixth of the total water power generation is now flowing over government dams.
      a. W. J. Magee, adviser to Governor Pinchot, says so.
   3. Electricity increases the possibilities of machinery.

D. The question affects every citizen.
   1. Citizens pay the highest rate, and
   2. The average citizen is annually using more electricity.

II. It is dangerous to leave the development of the electrical industry entirely to private enterprise.

A. Power generation and distribution is a natural monopoly.
   1. Transportation of electrical current over a great distance is not practical in competition quantities.
   2. Bigger plants lower the cost of production.
   3. It lends itself very naturally to the shifting of load and stress as needed.

B. The private companies at the present time are overcharging us.
   1. The private companies have reduced their rates when forced to do so by government production, for this was true in,
      a. Cleveland.
      b. Winnipeg.
      c. Massachusetts.
      d. Baltimore.
      e. Pasadena.
      f. Seattle.
   2. A comparison of municipal and private rates shows this.

III. Other countries have found public ownership of business beneficial.

A. In general ownership of great enterprises, i.e., public ownership per se.

1. New Zealand tried it when still very immature as a state and has found it satisfactory.
   a. In 1873 the government built railroads which have been successful.
   b. The government owns and operates telephone and telegraph lines which are more efficient than American ones.
   c. The government also owns and operates insurance companies, coal mines, postal service, postal savings banks, etc., and maintains a workers' annuity fund.

(Ref: H. H. Lusk's *Social Welfare in New Zealand.*)

B. The particular instance of the hydro-electric superpower utility is peculiarly adapted to government ownership.
   1. Ontario, Canada, has a governmentally owned monopoly which is nearly ideal.
      a. Since a utility of this kind is a natural monopoly it is best that the government have control of it.
         (1) The government is interested not in private gain, but in the interests of the people.
         (2) Private monopolies almost invariably exploit people.
      b. The Ontario plan is complete and business-like.
         (1) Generation and distribution for all the Province is under one head, and this makes for efficiency and economy.
         (2) Electricity is distributed at actual cost thus reducing rates.
         (3) The organization is subdivided into municipal distributing organizations which help run it.

C. Rates are lower than in the United States.
   1. The average price per K.W.H. for domestic service in 1926 was 7.4c in the United States and 1.6c in Ontario, and even adding American extras, this makes the Ontario price only 2.4c.

2. Average rates on all lighting for all of the United States was 6.8c per K.W.H. and for all of Ontario was 2.0c per K.W.H.
3. Average rates on all industrial power were 1.3c K.W.H. in the United States and 1.2c K.W.H. in Ontario.

IV. The United States has found government ownership profitable.
   A. In general ownership of enterprises.
      1. It has owned many utilities and still does, such as
         a. Postal service.
         b. Postal savings banks.
         c. Public highways.
         d. Public libraries.
         e. Public schools.
         f. Public hospitals and clinics.
         g. Municipal parks, golf links, etc.
         h. Law and order institutions.
   B. In particular ownership of electric power plants.
      1. Many cities have found municipal ownership beneficial.
         a. The municipal plant in Seattle, Wash., forced the private company to reduce rates there.
         b. Los Angeles owes many of its industries to cheap power rates.
         c. The Pasadena municipal plant forced a reduction from 15c per K.W.H. to 8c K.W.H.
         d. The plant at Cleveland, O., more than paid its way.
         e. The Tacoma light plant saves the city much money.
         f. Rates in municipally owned plants are the lowest of any place in the world.

V. Ownership and operation is a proper function of government.
   A. The government itself is a business carried on by the public.

1. Once a private enterprise, it now requires the expenditure of over eight billion dollars of public money annually.

B. Our school system is an evidence of the efficiency of public control.
   1. Our educational system is a business calling for an expenditure of over four billion dollars a year.

C. The post office, one of the greatest achievements of modern civilization, handles 545,000,000 dollars annually.

D. Irrigation projects demonstrate the efficiency of public control.
   1. At present there are twenty-five projects in fourteen states being carried on under public operation, and
   2. There are nineteen hydro-electric plants operating in eleven states.

VI. Regulation has been proven inefficient and shows a lack of any standard of rate measure.

A. Commissions are politically organized.
   1. Insull gave $200,000 to the election of Smith of Illinois who was head of the Public Utilities commission.
   2. Commissions cannot question the wisdom of contracts of private corporations.
      a. In the case of the American Telephone and Telegraph Co. and its subsidiaries, the Supreme Court held that local regulating bodies have no right to pass judgment on the wisdom of a contract, and, unless collusion is proved, it must stand.
   3. Holding companies make it impossible for the commission to know just where the funds of the local units are going.
      a. In the case of the Indiana Public Service Commission in 1926, the S. Indiana Gas and Electric Co. paid its holding company, the Commonwealth Power Co. of New York, 6 per cent of the cost of extensions and 2 per cent on their annual gross earnings.

b. The Nebraska Power Co. paid its holding company, the National Power Co. of New Jersey, a fee of 5 per cent on gross revenues and 15 per cent for engineering services.

4. There is little chance of the commissions to check on capitalized valuation.
   a. The Narraganset Light Co. was overcapitalized by $16,920,000.
   b. Holding companies can pay exorbitant prices for smaller plants to increase their capitalized valuation.
   c. The Conowengo Maryland plant was overcapitalized by $9,000,000 according to O. C. Merrill, Secretary of the Federal Power Commission. He stated that commissions had no power to check on the acts of a corporation before its license was granted.

5. It is physically impossible to install a bookkeeping system that will be a sure indication of the activities of the utility company.

NEGATIVE

INTRODUCTION:

A. In the proposition as stated in this debate there are two debatable questions.
   1. Whether we should retain ownership.
   2. Whether the public, thru its Government, should develop, or whether this should be left to private enterprise.

B. The Negative agree that the public should own the power sites and retain that ownership.
   1. That is fundamentally right.

C. As to development, the Negative agree with Lincoln that the Government should stay out of all enterprise which private business can do as well.
   1. The Negative is opposed to any law which will exclude private individuals from any field.

I. There is nothing wrong in our present system that cannot be met with government regulation.

A. During the era of increasing consolidation and monopoly, the service has been extended wonderfully.
   1. In the last seven years, ten million new customers have been added.
   2. In the last five years four thousand communities have been reached that had never had electricity before.
   3. From 1913 to the present time, there has been a decrease in rates of 18 per cent.
   4. According to averages, during the same period, twenty-two of our principal cities have shown a decrease in rates of 22½ per cent.

II. It is not true that we do not have adequate control over this monopoly.
   A. At the present time, we have ten definite checks on industry.
      1. The Federal Power Commission.
         a. This was established in 1920 for the express purpose of regulating water power sites, and for the regulation of electric power industries.
      2. The Federal Trade Commission.
      3. The Public Service Commission.
      4. Anti-trust laws.
      5. The Federal district courts.
      6. The Federal Supreme Court.
      7. Municipal franchise power, etc.

GOVERNMENT OWNERSHIP AND OPERATION OF POWER SITES

BELOIT COLLEGE

versus

PURDUE UNIVERSITY

FIRST AFFIRMATIVE

Allan Magee, Beloit

MR. CHAIRMAN, LADIES AND GENTLEMEN: The question for discussion tonight is: "Resolved that the public should own and operate all hydro-electric power sites not already operating under private control."

In the first place, this necessarily limits the question to those power projects now in the hands of the government or, as the question says, except those that are under private control. In the interpretation of the question, the Affirmative maintains that the Negative must oppose both ownership and control by the government. They must favor the sale of all government owned power sites to private concerns. We challenge the gentlemen of the Negative to show adequate reasons why the government should sell these valuable properties instead of retaining them to prevent exploitation of the people. We have based our argument on the following syllogism:—It is the duty of the government to prevent exploitation of its citizens; to retain ownership and develop the power projects now in the hands of the government will prevent such exploitation; Therefore the public should retain ownership and develop hydro-electric power sites except those in private hands.

I should like to point out to you that the question is one of great importance today, and I should like to show you the danger of allowing the monopoly of the electrical industry to continue.

Today we hear much of the Boulder Dam and the Muscle Shoals controversies. Senator Walsh attempts to bring before

the public the huge menace of power concerns. Interest in power projects is running high. For twenty years progressive citizens have been attempting to center interest in government ownership and operation of hydro-electric power sites.

The crux of the question this evening is, "How can we furnish electricity to the *greatest number* of consumers at the *cheapest price?*" Can we do this by having the government operate some plants, or can it be done by government regulation of private companies who furnish electricity to the people?

We should be greatly interested in the amazing development of the electrical industry. Sixty-one billion kilowatt hours are now generated per year. Ten million tons of coal are used for this purpose. (*Power Control* by Raushenbush).

In 1881 there were only eight plants in this country, but today there are over ten thousand, which means that, on the average, 333 new plants have been built and put into operation each year.

A few years ago electrical appliances were considered an expensive luxury, but today the electric iron, washing machine, and vacuum cleaner are considered household necessities. Even heating by electricity does not appear to be very far off.

This is the age of electricity. No other form of power has such possibilities or can be put to so many different uses. Great minds all over the world are turning to the electrical field as the most important one in invention. It is difficult to estimate or comprehend the future of this industry that has grown so rapidly in the past.

Raushenbush, in his book on *Power Control*, declares that in 1950 the Great Lakes states alone will use as much electrical power as is today used by the entire United States. W. J. Magee, adviser to Ex-Governor Pinchot of Pennsylvania, declares in The *New International Encyclopedia,* Vol. V, that the amount of power available by water alone today exceeds the total mechanical power now in use, or enough to turn every mill-wheel and spindle, to propel every boat, train and automobile, and to light every town and city in this country.

That is the extent of the problem we are considering tonight. How is this great industry that has such a control over the American home being handled?

We should like to point out to you that the concentration of electrical power in few hands is rapidly growing because of the nature of the industry. Since it is a monopoly, it is not

practical to have two electrical companies in one town, granting two franchises, having two power carrying units when one will do the work just as well. Furthermore, development of super power projects has even increased this concentration in a few hands.

By hooking a number of smaller plants together into one great producing combine, much money can be saved by the producing company. They can hook all these into one distributive super power monopoly with a great saving to each unit. But the question is this: does any of that saving come back to the *domestic* consumer, to the majority of American citizens?

The control of this industry by concentration in a few hands has increased so rapidly that in 1925, according to Raushenbush and Laidler in *Power Control,* twenty companies controlled 83 per cent of the electrical industry created in the United States. Of the sixty-one billion Kilowatt hours generated in the United States in 1925, fifty billion K.H. were produced by these twenty companies. This means that the control of a majority of the sources of electrical power is so colossal that eighty-six million Americans must depend on these corporations for their electrical supply or go without it. That is the grip that the electrical industry has on the American home today.

The point we want to make at this very moment is that these private electric companies are overcharging the domestic consumers, knowing that they have no way to beat the power trust such as industrial companies sometimes possess.

Today the domestic consumer is paying from four to ten times as much for the same amount of current as does the industrial consumer simply because he has no way to resist this electric trust.

That is the situation we want to remedy, and the affirmative plan is to have the government own and develop some of these power projects in order that electricity may be furnished to the *public* at a cheaper rate.

This power trust threatens the political and industrial life of this nation, for this great electrical monopoly attempted to gain control of the political machines. By large expenditure of money they control many state commissions. Just last year the Insull interests of Illinois spent $250,000 to get their candidate elected to the United States Senate in order that he might guard their interests in that body.

That is the condition, Ladies and Gentlemen, that we are facing. That is the condition every one of you electrical consumers is confronting, and when we consider the danger of this monopolistic tendency, we realize the problem is one that concerns every one of us.

While R. G. Collier of *Pearson's Magazine* points out that municipal plants have demonstrated that electricity can be produced at 1/3 of a cent per K.H. and distributed at one cent per K.H., we see that the domestic consumer sometimes pays as high as 12c and even 20c per K.H. Therefore extortionate profit is being made by these companies and they have the domestic consumer absolutely at their mercy.

But let us see what happens when municipal plants are established and put into competition with private electric companies. In Cleveland a municipal plant was established and in a short time the domestic rate was reduced to 1/5 of that charged by the private company. In London and Ontario, Canada, the domestic rate was cut 1/7 of that charged by the private company, and in Pasadena, California, the rate was cut to 1/3.

We cite these cases to prove that exorbitant rates are charged by private companies. When there is no competition they know that they can charge what they want and the consumer must pay or do without.

When we consider that a discontinuation of electric service would result in our being cut off from the use of convenient electrical appliances, without light, and possibly without heat, we realize the throttling control the great electrical monopoly has on the American public. Because they realize they have this control, they want to keep the government from breaking this strangle hold by furnishing electric service at a more reasonable rate and so forcing them to do likewise throughout the United States wherever there are commissions.

This regulation of rates by government, Friends, is what the Affirmative proposes. Our plan is simply this: Let the government retain the ownership and development of those power projects that they now have. By furnishing electricity at a reasonable rate, the government will show exactly for what rate electricity can be produced. It will show private companies, the consumer and the government regulating commissions how much it can be distributed for. More than that, it will show the people what an exorbitant price the private companies are charging.

By using these government plants as a measuring stick, a standard of rate, we will be able to force the private plants to cut down their rates to meet that of the government plant or they will be forced out of business.

It will establish a rate standard, show the people that the prices charged by private companies are exorbitant and can be reduced without any injury to the company.

In conclusion, we have shown that this electrical industry is of monopolistic character, that competition is not feasible, and because of this, the private electric companies have things just about their own way and can charge the domestic consumer about what they will.

To prevent this exploitation of the American consumer, to carry out the province of the government, namely, that it should protect its citizens from exploitation, we of the Affirmative maintain that the government should retain the government plants that they now own and use them for a measuring stick, a rate standard, to show exactly what the rate should be and thus make the private companies meet that rate or go out of business. I thank you.

SECOND AFFIRMATIVE

Kenneth Arrington, Beloit

Mr. Chairman, Ladies and Gentlemen: The gentleman of the Negative has informed you and us that there are two possible questions to debate this evening—a question as to whether we shall kill a cat or as to whether we shall kill a dog. In the nature of the case, we of the Affirmative say kill both the cat and the dog. But we would point out the fact that they are partially agreeing with us. If they say kill the dog, and we say kill the cat *and* the dog, they agree with us as far as the dog is concerned. That we should like to have you remember.

They have also stated that they agree with Lincoln concerning some of these things, that this Government should stay out of business and shouldn't meddle. We of the Affirmative want to point out that we agree with Herbert Hoover that the Government should not interfere with private business unless it becomes necessary to save the people from exploitation, and we believe

with Senator Norris that this is a time when exploitation is a danger and that we must step in immediately to remedy that condition.

When we of the Affirmative think about regulation which the Negative is supporting tonight, we feel very much toward that as we do toward the Byrd Antarctic Expedition—"Not so hot." With the present system of regulation, you start with the local board; if you have any kick about that, it goes to the county board, then to the state board, and then to the national board until you are bored to death, and still there is nothing done. And that is just an example of the way regulation has worked in the past and without doubt will work in the future. To quote from Herbert Hoover's speech before the National Electric Light Association at Washington, D.C., "Regulation is not the road to a solution of these problems."

There is another fact that I should like to point out to you. The figures used by the Affirmative are taken from reports of the National Electric Light Association, and the figures which I shall quote a little later in my speech and which my colleague will refer to are from official government reports. We shall leave it to you as to what authorities are better relied upon.

The Negative has asked us to point out to you what is wrong with monopoly—why there is a danger in monopoly. I am going to quote Governor Pinchot of Pennsylvania who said, "Nothing like this gigantic monopoly has ever appeared in the history of the world. Nothing has ever been imagined before that even remotely approaches it in the thorough-going, intimate, unceasing control it may exercise over the daily life of every human being within the web of its wires. It is immeasurably the greatest industrial fact of our time. If uncontrolled, it will be a plague without previous example. If effectively controlled in the public interest, it can be incomparably the greatest material blessing in human history." We of the Affirmative contend that it is not possible to allow these power sites to be taken over under private control and to be taken care of efficiently in the public interest.

Taking up the second speech for the Affirmative, I am going to indicate to you the benefits of public ownership and the dangers we should guard against in private ownership. My Friends, I am going to show you just where in this country the rates are "so exorbitant that we need to do something about

it." I am going to point out to you that according to government reports in 1926 the average domestic current rate in the United States was 7.4 cents per kilowatt hour, but according to government reports of Ontario, Canada, the rate in Ontario per kilowatt hour was only 1.6 cents.

In order to give the Negative a "break," we are going to weight these figures in order to take care of any taxes and dividends which are paid in the United States and not paid in Canada. For example, we will add 10 per cent to the Canadian rate to cover taxes which are not paid in Canada. We will add another 10 per cent for dividends not paid in Canada, and another 30 per cent to cover the difference in water power and coal power, and still we have only 2.4 in Ontario, Canada, under government control and 7.4 per kilowatt hour in the United States under private ownership.

That is the difference between private ownership and public ownership—a difference of 5c per kilowatt hour. I should like to have our friends of the Negative explain the reason for this difference.

Let us take the figures in 1926. We find, according to Government reports in 1926, the last available, that the average rate for domestic, commercial and street light all over the entire United States under private ownership was 6.8c per kilowatt hour, while in Ontario, Canada, under public ownership, the rate was only 2c per kilowatt hour. Under the Ontario rate, the light bill in the United States for that year would have been less by 713 million dollars, a tremendous saving. Our friends of the Negative wouldn't care to have us waste that amount of money any other way. Yet they say we should continue under private ownership.

The power rate in the United States in 1926 under private ownership was 1.3c. The rate in Ontario under public ownership was 1.2c per kilowatt hour. That is, there was a difference of .1c per kilowatt hour, not a large amount at first thought, but sufficiently large that, at the Ontario rate, the total American power bill in 1926 would have been less by $28,819,000.

We could point out examples all over the United States where, when municipal plants have taken control, the rates were immediately lowered. In Cleveland, Ohio, the rate was reduced from 15c to 8c when public ownership began. In Los Angeles many of its large industrial plants are there because

of the fact that the municipal plant furnishes electricity at a very low rate. We might go on indefinitely and point out cases like these.

Our friends of the Negative are taking isolated towns and comparing them to other isolated towns under dissimilar conditions. From these comparisons they are trying to deduce an example, but we can give you an example where the comparison is made on similar grounds. The international bridge over Niagara Gorge is lighted the entire length, half of the current being furnished by the United States and half of it by the province of Ontario, Canada. The production of that electricity costs just the same amount to both countries, for the conditions of production are identical. But what is the difference in the charge made for the current?

In the United States we have private plants furnishing the electricity, but in Ontario, the government ownership system furnishes the electricity. Just what is the difference in the cost? In the United States that half which is furnished by the private companies costs $20 a month, while the half furnished by the publicly owned Canadian plant costs $9.13. The cost is over twice as much for the half furnished by the American privately owned companies. And yet, My Friends, the Negative tell us tonight that we should have a complete system of private ownership in the United States.

Frankly, we of the Affirmative are surprised that they should suggest that we need to point out the difficulties in the present situation, because, if the present rates are not exorbitant, we have never seen any that are.

Just in a general way, I want to say that private ownership under regulation is today and will be in the future a miserable failure, but public ownership has been carried on successfully in many places, notably in New Zealand. In 1873 the government there decided to build a system of railroads covering the main transportation needs of the country, and, knowing that private companies could not finance the project because of their lack of capital and the necessarily slow return on the investment, built these roads itself at a cost of approximately $53,000 a mile which at that time was considered a very low cost, showing that governments can be efficient at times, outrageous as that may seem to my negative friends!

According to H. H. Lusk of the New Zealand Parliament, those governmentally owned roads have been in the past a great,

and are today, an increasing, success. The New Zealand Government not only owns its railroads, its telegraph and telephone companies, and a dozen other utilities, but I might point out to you that in every one of those utilities the rates are less than half the rates on the same utilities in our great United States.

That is just one example of general government ownership and its success.

I would point out to you that in this publicly owned monopoly in Canada not only are the rates lowered, but each year there is set aside from these rates an amortization fee which at the end of thirty years will have entirely paid the whole investment for these plants.

We in the United States are not operating under such a safe and sane method; instead, what are we doing? These private companies are watering their stock, which will be described by my colleague a little more fully, increasing capitalization in order to get away from the regulation the government is trying to maintain. My colleague will also point out to you how regulation in the past has been a failure, and in the future can also be expected to be a failure.

THIRD AFFIRMATIVE

Arthur Weimer, Beloit

Mr. Chairman, Ladies and Gentlemen: It seems that so far in the debate this evening there has been a good deal of wrangling over rates. I wish to point out to you that we have two kinds of rates, namely, industrial and domestic.

In regard to the industrial rates, they are usually low. There is a reason for that. The industrial plant says to the company which produces the electricity and supplies it, "You give us electricity at a low rate and we will put in our own generating plant." You and I can't do this. I will show you the difference.

In the United States, as my colleague has already pointed out, the domestic rate on the average is 7.4. The industrial rate on the average is 1.3, and our friends of the Negative are averaging both the industrial rates and the domestic rates together. We are not interested in the industrial rate tonight. There is no reason for changing that, for industry is getting

its electricity cheap enough. It is the domestic consumer in whom we are interested.

As already pointed out to you, there is a difference. The figures showing this are taken from the report of the Chairman of the Interstate Commerce Committee in a report to the United States Senate. In those figures the average rate for the domestic consumer is 7.4 in the United States and in Canada it is 2.4. After you have added a percentage for taxes and for dividends and also, in contrast to what the gentleman of the Negative says, for the difference between steam and water power generation, still there is 5c difference per kilowatt hour in the United States and in Canada where public ownership prevails. Considering those figures, there certainly is a need for a change if we want to protect the domestic consumer.

The gentleman of the Negative also said, "It is too bad we haven't a good Niagara Falls in every state." We just want to remind you of the lighting on the bridge, where one-half of the electricity is furnished by the publicly owned plant in Canada and one-half by the private company in the United States. The United States charges just twice as much for the electricity which is produced under identical conditions. We would ask our friends to explain that away.

And then they say that our municipal plants have decreased. That sounds rather startling, but by figures taken from the United States' Census reports, we find in 1895 that the increase in the number of municipal plants was 18.5 per cent and in 1922, by the latest figures given on this, it was 40.6 per cent. And so, while they may have been falling off in some isolated communities, the ratio of the increase from 18.5 per cent in 1895 to 40.6 per cent in 1922 shows that municipal plants are increasing.

Now to go on with more of his arguments. He says that public ownership isn't working out very well, and yet my friend on the Affirmative has pointed out to us that in New Zealand there is practically entire control by the government of all the chief industries, and they are all successful.

I want to go on a little further than that. Take, for instance, the United States Government in which over forty billion dollars is invested under public control. Is that being run efficiently? That is certainly a monument to public enterprise.

They say that the post office is running behind, and yet, did

you ever stop to consider when you can send a letter for 2c from one end of the United States to the other and from any territory of the United States, to some of the foreign countries, that if the Government charged 3c for every letter instead of 2c, the post office would show a surplus instead of a deficiency?

In 1925 they took in four hundred and eighty-three million dollars and paid out five hundred and forty-five million, a difference of about fifty million, which could easily be made up by adding a little bit on each letter if they wanted to do that. But the post office department is run to supply something for the public good. There is another distinction. Whereas the private enterprise is run primarily for profit, the public enterprise is run for service. We want to remember that distinction.

There has been a good deal said about regulation this evening. I will devote the remainder of my speech to showing that regulation has been a terrible failure in the past.

In the first place, regulation has been a failure because commissions have been politically organized.

As my friend has already pointed out to you, Insull paid two hundred thousand dollars for the election of Smith, who was Chairman of the Public Utilities Commission in Illinois. Certainly there is some significance in that.

In the second place, commissions have not the power to question the wisdom of a contract with private corporations. I will cite the American Telephone and Telegraph Company. Regulatory bodies have no right to pass judgment on the wisdom of a contract, and unless collusion is proved, the contract must stand. You can't inquire into the wisdom of a contract.

In the third place, you have not only this inability to consider, but you have over in New York a holding company which controls voting stocks in a Wisconsin Corporation, and the latter pays to that holding company a certain percentage of its income for general advisory services and another one for supervisory services and so forth—charges which no commission can check up on, and into which you have no chance of inquiring. Consider the case of the Indiana Public Service Commission in 1926. Its holding company, the Commonwealth Power Company of New York, was receiving 6 per cent of the cost of extensions to electric and gas projects and 2 per cent gross earnings, which amounted annually to $100,000. Again, take the case of the Nebraska Power Company which paid its

holding company, the National Power Company of New Jersey, a fee of 5 per cent on the gross revenue and 15 per cent for engineering services.

Hence, you see that it is pretty hard to check up on that. You don't know whether those charges are large or not. Yet, it seems rather absurd that any company operating off in New York should be paid 5 per cent of the gross income for general advisory services, doesn't it?

In the fourth place, there is little chance to check on the capitalization of these private plants. We have already shown that the power commissions have been a failure, but I will point out one big case in which they have fallen down abominably. In the Conowengo Power Company in Maryland nine million dollars were added to the capitalized value of that corporation, because they said they spent that amount of money in promoting this corporation. Because the commissions haven't the power to inquire into the acts of the corporation before it is chartered, that nine million dollars had to stand. They couldn't inquire into it and consequently the capitalization of this corporation was increased by nine million dollars, and rates were paid on the basis of the increased capitalization according to a statement by O. C. Merrill, Secretary of the Federal Power Commission. So it was a pretty good sort of business proposition. Private business is run for profit and publicly owned plants are run for service. We want to remember that.

In the words of the Michigan commission, "This method of determining value included percentages for engineering services never rendered, hypothetical efficiency of unknown labor, conjectural depreciation, opinion as to the condition of property, the supposed action of the elements, and of course its correctness depends on whether superintendence was or would be wise or foolish, the investment improvident or frugal. It is based upon prophecy instead of reality, and depends so much upon half truths that it bears only a remote resemblance to fact, and rises at best, only to the plane of a dignified guess."

That is the condition of our regulatory bodies. They are in a position to offer nothing more than a dignified guess!

Are you going to throw over the only chance we have left of providing a means of preventing exploitation of the people? Remember, we of the Affirmative want to retain those sites so that we can have a standard of reasonable rates which can be

used by regulatory bodies to bring down rates all over the country.

FIRST AFFIRMATIVE REBUTTAL

Kenneth Arrington, Beloit

MR. CHAIRMAN, LADIES AND GENTLEMEN: The gentleman of the Negative stated that the question of regulation is of no account. That is all very simple. If the case could be settled that easily, we of the Affirmative wouldn't be here tonight. But we don't feel that the charge made by the Negative has been supported. We have found no authority, nor have they given us any authority to support that charge.

I also want to point out to you that the figures for the two sides in this debate are not taken from the same reports. From where have the figures for the Negative cases been taken? From the census reports of 1922. They are perfectly authentic reports, and we do not question them, but there are later figures than those, and we would point out to you that the figures that I and my colleagues have used were given in a report before the Senate in 1927, covering figures for 1926, this being an official government report. I wish to point out to you that the difference in the rates quoted can be accounted for by that difference of four years.

We might go on and take up the question my good friend of the Negative asked as to whether or not the two cases at Niagara were similar, in that in one of them the electricity might be furnished by water power and in another by coal power. I just want to say that the power furnished by either company was the same sort of power. He said that obviously we couldn't have two sets of rates because it would be inconsistent. I will point out to you a place where the rates were proved to be inconsistent. In Seattle, Washington, there are two plants, one publicly owned plant and one privately owned plant, and the bill for five hundred and nineteen kilowatt hours was $8.98, charged by both of these plants. That is the result of having the municipal plant in operation there to keep the rates down for we find that in neighboring cities there were plants operating under the same conditions and by the same company as in Seattle, but there were no municipal plants to keep the rates down. And what were the rates there? In

Walla Walla, they were $19.24; in Wenatchee, $19.03, and in Aberdeen, $32.40 for identically the same amount of electricity that was furnished in Seattle for $8.98; merely because there was no municipally owned plant there to keep the rate down. That is just a little inconsistent.

A great deal of attention has been given in the last few years to both public ownership and private ownership. Now, my friends of the Negative for some reason seem greatly annoyed that we of the Affirmative believe that public enterprise is primarily for service. I desire to point out to you that the government of the United States is the largest single business in the world, and if that largest single business isn't for service, why don't we change it? We are supposed to have some say about how this government is run, and if it isn't run somewhere near efficiently, why isn't something drastic done about it? Our post office department is operated on such a basis that no private corporation could even attempt to compete with its service or its rates. What private company would carry your letters across the continent or to England or Australia for the sum of two cents?

So far in the cases cited this evening, the Negative have failed to point out one single instance where regulation has been a success. They haven't shown one single instance where it has worked, but my colleagues have pointed out to you many cases where it has been a miserable failure.

We have so far in the debate this evening indicated that even municipally owned plants scattered all over the country have been able to furnish electricity cheaper than any place in the United States or any place in the world, except in Ontario, Canada, where they not only have a publicly owned system but they have a universally operated power system which can operate at the lowest possible power cost.

SECOND AFFIRMATIVE REBUTTAL

Arthur Weimer, Beloit

MR. CHAIRMAN, FRIENDS: Before proceeding any further, I want to point out the fallacy of a speech made a few moments ago when the gentleman said, "The government is not a business, and should be a centralized business in order to be efficient."

Should be centralized—and yet, we pointed out that our government is probably the biggest single business in the world.

We should like to cite the American public schools as another monument of efficiency in government ownership and regulation. We should like to ask whether the people working in our public schools are unprogressive under government operation, whether they don't try to increase the efficiency of our schools, or whether you think they shirk their duties just because they are not working for private individuals. Rather than this, we believe they give the best kind of service if they are not in the employ of private individuals, because our school system has shown that it is becoming more efficient every year.

I want to say further that when they say something about commissions having the right to look into contracts, remember we pointed out definitely that they didn't have the right to question the wisdom of a contract. That is, for instance, if I enter into a contract with another man, you can't question my entering into this contract unless you can prove definitely that I was in collusion. Commissions haven't the right to do that.

I want to go on further and point out that they said that commissions have the power to control the issue of stocks and bonds, and have power to control these rates, and they want to know what is wrong with that. Corporation finance is a mighty interesting and ticklish game. The public commissions may go in and check certain figures, yet behind those figures they could include depreciation of property, cost of services given to some outside corporation, adding to their buildings, adding to their equipment, and all that sort of thing, which the commission is powerless to get at. In fact, many of these schemes are used by corporations now so that they do not have to pay the preferred stock any more than their regular rate of interest, and the common stock gets a big chunk out of it. Any corporation may add to its equipment, as already pointed out, and they have got the right to add to their buildings. I will point out again, in order to justify that course, they must show they are going to build or add to their equipment and must have more money, but the commissions are powerless to go in there and find out just exactly what is wrong. The Negative needs to show you that these regulatory bodies have the power to do that before they can prove that these bodies can effectively regulate rates.

We have quoted instance after instance where the commissions have failed and I could quote more but there isn't time.

They claim that the domestic consumer ought to pay more for rates because of the increased expense of supplying him with electricity, but the real reason that the industrial consumer gets a much cheaper rate is that he is in a position to demand a reasonable rate and gets it, for if they won't supply it at that rate, he will generate his own electricity, and the domestic consumer cannot do this. They say that industrial rates in the United States are lower than they are anywhere else. And yet, in the United States the rate for industrial plants per kilowatt hour is 1.3, and in Ontario, even after giving them credit for taxes and dividends the rate is 1.2—still a difference of .1 in favor of the publicly owned utility company for industrial rates.

And so I will close. I just want to say as a parting shot that Theodore Roosevelt once said, "The people of our country are threatened by a monopoly far more powerful because in far closer touch with our domestic and industrial life than anything known to our experience. Our coal and petroleum supplies will soon be exhausted—our water power alone, if properly developed and wisely used, is sufficient for present needs. Most of it is undeveloped at present and still is under state or national control. To give away this, one of the greatest of our resources, would be an act of folly. If we are guilty of it, our children will be forced to pay an annual return on a capitalization based on all that the 'traffic will bear.' They will become a consolidated interest, controlled from the great financial centers, dictating the terms upon which the citizen can conduct his business and earn his livelihood and not amenable to the wholesome check of local opinion."

THIRD AFFIRMATIVE REBUTTAL

Allan Magee, Beloit

In the first place, we should like to straighten out this matter of reports and figures. *On February 29th, March 5th and March 9th, 1928, the United States Government Printing Office in the Congressional Records published the figures quoted by my colleague, Mr. Arrington, and the source of supply for

* (In speeches by Hon. George W. Norris.)

this information was the Hon. George B. Cortelyou, Chairman of the National Utility Association in a report to the Interstate Commerce Committee of the United States Senate January 19, 1928 on the basis of the 1926 figures. We hope this matter of rates and figures is now settled.

Another thing I want to point out is the matter of regulation. We have done our best to show you that regulation is not a success, and the Negative have given us no reason to believe otherwise, although they have spent some little time on the subject. The last man on the Negative pointed out that there were nine controlling bodies with regulatory powers, and we have pointed out that even with these nine controlling bodies rates are still high. If we had nine more controlling bodies than now exist, the rates would undoubtedly be higher.

Furthermore, we should like to point out again the matter of average rates. We have brought this matter up several times, and we should like to leave with you this matter of the average rate to the private consumer. In the report to the United States Senate Interstate Commerce Committee quoted above, in 1926 the average rate for the domestic consumer in a selected group of American cities was 7.4c while the average industrial rate was for the entire United States 1.31c; while in Ontario the domestic rate was 1.66c and the industrial rate 1.22c, showing how public operation brings down the cost to consumers to only 1/3 more than the industrial rate; while in the United States private ownership makes the domestic rate 4 ½ times as great as the industrial rate or about 14 times as wide a spread as in Ontario.

In short we have shown that the reduction of domestic rates where municipal plants have been established is general throughout the country. We have cited several instances of cases where it has been a success, but the Negative have not given us a case where it is a failure.

They tell us that government ownership is impractical. One particular point of this is the condition of politics. What of the condition today when vast sums of money are spent in the regulation of commissions? When the Insull interests spent two hundred and fifty thousand dollars to get men into the Senate to guard their interests. Ladies and Gentlemen, when conditions like that exist in politics, it is hard to see how it could be much worse under government regulation.

They say the Government is inexperienced. We do not advocate the Government taking over all these power plants. The Government has had some experience in operating plants. We have cited the problem of the post office department, and have shown you that it can be made a success with an idea of service to the public, not the monster, PROFIT.

The Panama canal project was a miserable failure under private enterprise but was made a success by the United States Government.

In conclusion, I should like to point out what case the Affirmative has attempted to make out this evening and how the Negative has attempted to meet it.

In the first place, the Negative have challenged us to show any danger in monopoly. We have shown you that four-fifths of the electric power in the United States today is controlled by forty-one corporations. Now, perhaps there is not any very great concrete danger in this monopoly, but with this great control in a few hands, who can tell what the future will bring?

We have shown you that municipal plants are operating at lower rates than private plants. Don't forget our authority for those figures.

Secondly, the Negative has pointed out that turning these private enterprises over to the Government would be dangerous and contrary to the principles of the American Government. The Affirmative has pointed out that the Negative is basing these arguments on the assumption that the Government is going to take over every one of the private enterprises and operate them.

Ladies and Gentlemen, remember that what we of the Affirmative are advocating is having the Government maintain just those plants that they now have, and develop the sources of hydro-electric power in the United States not already operating under private control, but to go no further; keep enough plants in operation to provide a measuring stick. They say that what we advocate would be contrary to American policies, based on the assumption that the Government would be taking over the whole thing, doing away with private enterprise. Please bear in mind that we would maintain just enough for a measuring stick.

We have shown you that the regulation system now in operation and upheld by the Negative does not work, and the only offer the Negative has for this is more regulation. And

furthermore, they have not shown you a case where regulation has functioned successfully. We have shown you the rates to the private consumers, the great majority of American citizens, in whom our Government should be interested; these rate figures were obtained from the Congressional reports. Finally, we have shown you that regulation has failed.

In conclusion, I want to point out that it is the duty of our Government to protect citizens from exploitation, and in maintaining power plants as a measuring stick, they are fulfilling this duty, and in doing so the Government will prevent monopolistic tendencies of private enterprise.

PURDUE UNIVERSITY
FIRST NEGATIVE SPEECH IN DEBATE AGAINST BELOIT COLLEGE

W. C. Jackson, Purdue

Ladies and Gentlemen: The question as has been stated tonight is "Resolved that the public should retain ownership and development of those sources of hydro-electric energy not already in the hands of private enterprises."

In this question, Ladies and Gentlemen, you will notice there are two debatable questions, First, whether we should retain ownership, and second, whether or not the public, through its Government, should develop or whether private enterprises should develop.

To the proposition as stated tonight, we say, No. For example, you may have the question stated, Resolved we should kill a cat and a dog. We would say, No, to that proposition, because we would not wish the cat killed but we wanted the dog killed. In other words, we agree the dog should be killed, but to the proposition as stated, Resolved that we should kill a cat and a dog, we say, No.

Tonight when we say, Resolved the Government should retain ownership of and develop the remaining sources of hydro-electric energy not already under control of private enterprises, we say, No.

Now, we agree that the public should own these plants and should retain that ownership. That is fundamentally right, because at the present time they already own them and we do not wish to buy them.

The question, then, resolves itself into whether or not the Government should develop these sources of hydro-electric energy or whether they should assume ownership of the developing plants.

We believe with Lincoln the Government should stay out of all enterprise or business which private enterprises can do as well, and we are opposed tonight to the laying down of any definite law which will exclude private individuals from any field. We should like to make that plain tonight that there is no question about the ownership, but that the question is whether or not it is more beneficial to us and to the public as a whole for the Government to develop these sources or whether it is more beneficial to have a continuation of our present policy. Our present policy is both Government and private development of the sources under Government regulation. We ask the Affirmative tonight to point out to you what is wrong with our present system of regulation, or what is wrong with the present system that cannot be met with regulation.

The Affirmative tonight have pointed out that there is a monopoly in the power industry, and the only bad effect of that monopoly, it was pointed out, was the fact that some of the rates were low on municipal concerns.

Ladies and Gentlemen, I should like to report what the Congressional Committee on Public Ownership in 1924 said: "It is our sincere belief there are no abuses existing, calling for government ownership for correction.

Before we go any further, I should like to correct this delusion about the rates. The average municipal rate in 1922 from municipally owned plants was 4.077 per kilowatt hour, and the average rate from private power was 2.35. That was from statistics gathered by the National Electric Rate Association.

The Affirmative tonight pointed out that with the exception of a few cases, the rate in the municipal plants was lower, and he deduces from that fact that all over the United States we have low municipal rates and high private rates. He would have us assume the municipal rates as a measuring stick. If I should use the municipal rates as a measuring stick, our private rates would have to be doubled.

At the present time, as my Affirmative opponent pointed out to you, the service has been extended wonderfully. From 1913 to the present time, we have had an increase in service that

has been large. In the last seven years ten million new customers have been added, and in the last five years four thousand communities that never had electricity before were reached. From 1913 to the present time, according to the National Electric Rate Association, there has been an 18 per cent decrease in rates. From 1913 to the present time, according to averages, twenty-two of our principal cities have shown a 22½ per cent decrease in the domestic rates.

So you see our consolidation of these power plants is producing good results. In other words, it is extending the service and it has been decreasing the rates. What, then, has the Affirmative against this monopoly? Before you can charge that there is a danger in this monopoly, you must show definite characteristics of a dangerous nature. First, the rates must be too high, and second, that the rates will be exorbitant. And we shall expect the Affirmative to show to you tonight that the rates all over the United States are far too high, and we should expect them to show to you that in general cases all over the United States service has been restricted. It has already been pointed out to you that the service has been extended to reach places where it had never been before. In other words, the Affirmative is admitting tonight the benefits of this consolidation, and that there are no defects, nothing harmful can be traced directly to that consolidation.

You know there are good monopolies and bad monopolies. We believe the Supreme Court is capable of judging between the two. The United States Steel Corporation consolidated its various units in order to increase efficiency and to give better service to the public. The Supreme Court decided that consolidation was beneficial. At the same time the Standard Oil Company consolidated and the Supreme Court decided against that consolidation, because they saw it would be a monopoly in the control of trade and that there would be no benefits gained from the consolidation.

We believe tonight that consolidation of more power plants is producing good results, showing good service, showing lower rates. We would ask the Affirmative to show definitely what is wrong with the monopoly; we would ask the Affirmative to show what is wrong with the present system which cannot be met with regulation.

The benefits of the super-power hook-up are well known. Only

through consolidation of plants can this widespread service be gained. In other words, there are definite benefits to be gained from consolidation.

And they would have you believe tonight that we have no control over this monopoly. At the present time we have ten definite checks on industry. In the first place, in 1920 there was established a Federal Power Commission for the express purpose of regulating water power sites, and second, for the regulation of electric power industries.

We would point out that 85 per cent of our water power is already under the control of the Water Power Commission, and the question comes up again whether or not it is more beneficial for us to continue our present policy of government regulation and letting private capital develop them, or whether we should have the public develop them.

We have the Federal Power Commission and we have the Federal Trade Commission. They mentioned to you the Public Service Commission, but they failed to mention to you that beyond this we have our anti-trust laws, we have Federal District Courts, and the Federal Supreme Court. And they failed to mention to you just what those powers were, the power to regulate stocks and bonds. They have mandatory powers over plants. And beyond this, we have municipal franchise power. By the terms of these franchises, as soon as a company is producing restricted service or too high rates, the municipality may assume ownership of that plant. In other words, Ladies and Gentlemen, we have ten definite checks, and they would have you believe we do not have control of industry.

We should like to ask them to point out what is wrong with the present system which cannot be met with regulation.

For that reason, because there is no dangerous monopoly at the present time, and because we have adequate regulations controlling power trusts, we believe it is not necessary to change from our present policy of regulation, and we believe the Affirmative must show to you tonight that our present policy may be changed, and that their proposed policy will benefit you individually.

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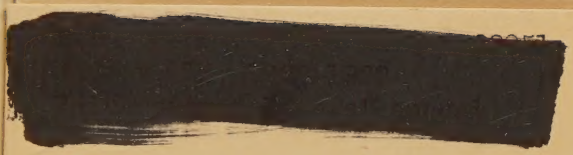

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